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U.S. Federal Trade
Commission

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September 1, 1935 to...

Place:

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Date:

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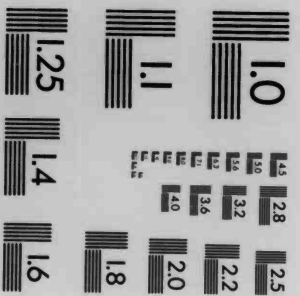
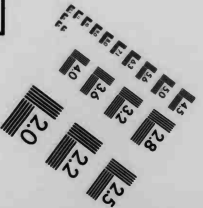
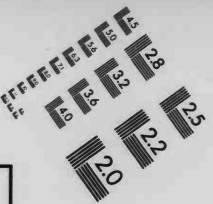
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Un. 394331 Trade Practice Rules

Sept. 1, 1935, June 30, '45

*Recd
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FEDERAL TRADE COMMISSION

TRADE PRACTICE RULES

SEPTEMBER 1, 1935, TO JUNE 30, 1945

FEDERAL TRADE COMMISSION

TRADE PRACTICE RULES

SEPTEMBER 1, 1935, TO JUNE 30, 1945



UNITED STATES
GOVERNMENT PRINTING OFFICE
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FEDERAL TRADE COMMISSION
AS OF JANUARY 1, 1946

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JAN 2 - 1946 BB

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Compiled by
CHARLES M. BROWN
of the Commission Staff

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FOREWORD

This compilation embraces trade practice rules promulgated by the Federal Trade Commission in the period September 1, 1935, to June 30, 1945. The industries covered are named alphabetically on pages IX and X and the practices to which the rules relate are listed in the Index to Rules at page 465.

The rules were established under what is known as the Trade Practice Conference Procedure, an outline of which is set forth in the Appendix, page 461. Proceedings instituted thereunder are cooperative undertakings between industry and the Commission to eliminate and prevent unfair trade practices and to provide guidance and assistance to industry in maintaining the conduct of business on a basis of free and fair competition in harmony with the requirements of law and the public interest.

Industry conferences.—Trade practice conference proceedings are authorized by the Commission upon application of an industry group or upon the Commission's own motion. When such proceedings are directed to be undertaken, a trade practice conference of the industry is called by the Commission to consider and submit proposed rules for the elimination of unfair practices and improvement of competitive conditions in the industry. Public notice of the time and place of such conference is issued and all members are invited to attend and are encouraged to contribute their views and best thought on the subject, in joint effort to arrive at constructive results within the law. Conference proceedings are conducted on the basis of voluntary participation. Parties in interest are at all times free to advise and consult with the Commission's representatives for the purpose of mutual exchange of ideas and the bringing about of a clearer understanding of the problems involved and the assistance which the Commission can render in their solution.

Public hearing on proposed rules.—Prior to final Commission action on rules for an industry, drafts of proposed rules in appropriate form are made available for public hearing and opportunity is afforded members of the industry and other interested or affected parties, including consumers, to present such pertinent views, suggestions, objections, or amendments as they desire to offer. These may be communicated to the Commission in writing or presented at the public hearing on the rules.

Promulgation and issuance of rules.—After final hearing, and upon full consideration, the respective groups of rules are approved and received by the Commission in the form deemed proper and satisfactory. Such provisions are thereupon officially promulgated as trade practice rules for the industry, the promulgation being made through the Federal Register.

Copies of the rules are also distributed to all industry members and each is afforded opportunity to record in writing his intention or willingness to observe the provisions in the conduct of his business. The rules are thus placed in effect simultaneously as to all members throughout the industry.¹

Classification of rules.—The rules of the respective industries are divided into two groups. Those of Group I define and specify practices which are unfair and which are to be prevented as unlawful. Since the use of such practices in commerce is required to be avoided, the Group I rules are of mandatory character; whereas the Group II rules cover only recommended or permissive practices. This distinction between the two groups of rules is explained in the respective headnotes which appear in the rules as officially promulgated, and which read as follows:

"GROUP I

"The unfair trade practices embraced in the Group I rules herein are considered to be unfair methods of competition, unfair or deceptive acts or practices, or other illegal practices, prohibited under laws administered by the Federal Trade Commission; and appropriate proceedings in the public interest will be taken by the Commission to prevent the use, by any person, partnership, corporation, or other organization subject to its jurisdiction, of such unlawful practices in commerce."

"GROUP II

"Compliance with trade practice provisions embraced in Group II rules is considered to be conducive to sound business methods and is to be encouraged and promoted individually or through voluntary cooperation exercised in accordance with existing law. Nonobservance of such rules does not *per se* constitute violation of law. Where, however, the practice of not complying with any such Group II rules is followed in such manner as to result in unfair methods of competition, or unfair or deceptive acts or practices, corrective proceedings may be instituted by the Commission as in the case of violation of Group I rules."

The rules as promulgated by the Commission are designed to foster and promote the maintenance of fair competitive conditions in the interest of protecting industry, trade, and the public. It is to this end, and to the exclusion of any act or practice which suppresses competition, restrains trade, fixes or controls price through combination or agreement, or which otherwise injures, destroys, or prevents competition, that the rules are to be applied.

—THE COMPILER.

¹ Rules when promulgated are published in the form of separate pamphlets which are obtainable upon request to the Federal Trade Commission. Codifications of Group I rules are also published in the Code of Federal Regulations of the United States of America (16 C.F.R.—Chap. I, Subchapter "B" and supplements thereto.)

FEDERAL TRADE COMMISSION

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TRADE PRACTICE RULES

1

FOR THE

WHOLESALE TOBACCO TRADE

PROMULGATED SEPTEMBER 28, 1935

STATEMENT BY THE COMMISSION

A Trade Practice Conference for the Wholesale Tobacco Trade, called at the request of the National Association of Tobacco Distributors, Inc., was held at the office of the Federal Trade Commission, Washington, D. C., on Friday, July 19, 1935.

It was stated at the conference that the National Association of Tobacco Distributors, Inc., represents 96 percent of that industry in the United States. It was further stated that the industry represents an investment of approximately \$150,000,000, with an annual sales volume of nearly one billion dollars. About 60,000 persons are employed by the industry.

For the convenience of the Commission and the information of the industry and the public, the rules are divided into two groups, namely, Group I and Group II.

THE RULES

GROUP I*

RULE 1.

The practice of using a brand of cigars, cigarettes, tobacco products, or allied lines as a "loss leader" to induce the purchase of other merchandise, the sale of which merchandise is used to recoup the loss sustained on the said brand of cigars, cigarettes, tobacco products, or allied lines, with the tendency or capacity to deceive or mislead purchasers or prospective purchasers and which unfairly diverts trade from or otherwise injures competitors, is an unfair trade practice.

RULE 2.

The practice of selling below cost, with the intent and with the effect of injuring a competitor and where the effect may be to substantially lessen competition or tend to create a monopoly or unreasonably restrain trade, is an unfair trade practice, cost being determined by including all elements recognized by good accounting practices.

RULE 3.

Price discrimination as between purchasers of cigars, cigarettes, or other tobacco products, whether in the form of discounts, services, or

* See page VIII for headnote applicable to Group I Rules.

otherwise, contrary to Section 2 of the Clayton Act, is an unfair trade practice.

RULE 4.

For any person, firm, or corporation to hold himself or itself out to the public as a wholesaler when such is not the case, or for any member of the industry to misrepresent the character of his business, with the tendency or capacity to mislead or deceive purchasers or prospective purchasers, is an unfair trade practice.

RULE 5.

The making, or causing or permitting to be made or published, of any false, untrue, or deceptive statement, by way of advertising or otherwise, concerning the grade, quality, quantity, substance, character, nature, origin, size, or preparation of any products sold or offered for sale, having the tendency or capacity to mislead or deceive purchasers or prospective purchasers, is an unfair trade practice.

RULE 6.

The imitation of the trade-marks, trade names, or other marks of identification of competitors, having the tendency or capacity to mislead or deceive purchasers or prospective purchasers, is an unfair trade practice.

RULE 7.

The practice of branding or marking or packing any products, or causing the same to be branded or marked or packed, in a manner which is calculated to or does deceive or mislead purchasers or prospective purchasers with respect to the brand, grade, quality, quantity, origin, size, substance, character, nature, material, content, or preparation of such products, is an unfair trade price.

RULE 8.

The defamation of competitors by falsely imputing to them dishonorable conduct, inability to perform contracts, questionable credit standing, or by other false representations, or the false disparagement of the grade or quality of their goods, with the tendency or capacity to mislead or deceive purchasers or prospective purchasers, is an unfair trade practice.

RULE 9.

The secret payment or allowance of rebates, refunds, commissions, credits, unearned discounts, or excess allowances, whether in the form of money or otherwise, or secretly extending to certain purchasers special services or privileges not extended to all purchasers under like terms and conditions, with the intent and with the effect of injuring

a competitor and where the effect may be to substantially lessen competition or tend to create a monopoly or to unreasonably restrain trade, is an unfair trade practice.

RULE 10.

Directly or indirectly to give, or permit to be given, or offer to give, money or anything of value to agents, employees, or representatives of customers or prospective customers, or to agents, employees, or representatives of competitors' customers or prospective customers, without the knowledge of their employers or principals, as an inducement to influence their employers or principals to purchase or contract to purchase industry products from the maker of such gift or offer, or to influence such employers or principals to refrain from dealing or contracting to deal with competitors, is an unfair trade practice.

RULE 11.

Wilfully inducing or attempting to induce the breach of any lawfully existing contract or contracts between competitors and their customers by any false or deceptive means whatsoever, or interfering with or obstructing the performance of any such contractual duties or services, with the purpose and effect of unduly hampering, injuring, or embarrassing competitors in their businesses, is an unfair trade practice.

RULE 12.

The circulation of threats of suit for infringement of patents or trade-marks among customers or prospective customers of a competitor, not made in good faith but for the purpose of harassing or intimidating such customers or prospective customers or otherwise prejudicing or injuring competitors in their businesses, is an unfair trade practice.

RULE 13.

The publishing or circulating by any member of the industry of false or misleading price quotations, price lists, or terms of sale, having the capacity or tendency to mislead or deceive purchasers or prospective purchasers, is an unfair trade practice.

RULE 14.

The practice of coercing the purchase of one or more products as a prerequisite to the purchase of one or more other products, where the effect may be to substantially lessen competition or tend to create a monopoly or to unreasonably restrain trade, is an unfair trade practice.

RULE 15.

Withholding from or inserting in the invoice statements which make the invoice a false record, wholly or in part, of the transaction represented on the face thereof, with the purpose or effect of misleading or

deceiving purchasers or prospective purchasers, is an unfair trade practice.

GROUP II*

RULE A.

The advertising or offering for sale by a wholesaler of any well-known or trade-marked tobacco product of the Wholesale Tobacco Industry at greatly reduced prices, when the quantity of said goods is entirely inadequate to supply the usual demand of customers of the said wholesaler, with the tendency or capacity to mislead or deceive purchasers or prospective purchasers, is condemned by the industry.

RULE B.

Where merchandise at wholesale and merchandise at retail are sold in the same establishment, the failure on the part of any member of the industry to properly differentiate between or identify the two types of transactions, where the result may be to create confusion and deception as to the character of the transaction in the minds of purchasers or prospective purchasers, is condemned by the industry.

RULE C.

The evasion of the payment of State taxes on cigars, cigarettes, or other tobacco products through interstate transactions is condemned by the industry.

A Committee on Trade Practices is hereby created by the industry to cooperate with the Federal Trade Commission and to perform such acts as may be proper to put these rules into effect.

Promulgated by the Federal Trade Commission September 28, 1935.

* See page VIII for headnote applicable to Group II Rules.

TRADE PRACTICE RULES

FOR THE

FIRE EXTINGUISHING APPLIANCE MANUFACTURING INDUSTRY

PROMULGATED NOVEMBER 13, 1935

STATEMENT BY THE COMMISSION

Trade practice rules were approved and promulgated by the Commission under its trade practice conference procedure for the Fire Extinguishing Appliance Manufacturing Industry. The application for a trade practice conference and approval of rules was made by the Chemical Fire Extinguisher Association, Inc. In the course of the proceedings opportunity for presentation of views of all persons interested in or affected by the proposed rules was given and conferences with industry representatives held. The industry embraces all manufacturers of equipment and appliances for fire fighting except automatic sprinkler systems and motor fire apparatus.

According to information furnished, the members of the Chemical Fire Extinguisher Association, Inc., represent 75 percent of the industry in the United States as to volume of production; the industry has an investment of approximately \$7,500,000, and employs wage earners to the extent of about 3,000.

The rules approved by the Commission have been placed under Group I, as prohibiting illegal competitive practices.

THE RULES

GROUP I*

RULE 1.

The false marking or branding of products of the industry, with the tendency, capacity, or effect of misleading or deceiving purchasers with respect to the grade, quality, quantity, substance, character, nature, origin, size, or preparation, or in any other material respect, of the goods purchased, is an unfair trade practice.

RULE 2.

The imitation of the trade-marks, trade names, brands, labels, or other marks of identification of competitors, having the tendency, capacity, or effect to mislead or deceive purchasers or prospective purchasers, is an unfair trade practice.

* See page VIII for headnote applicable to Group I Rules.

RULE 3.

The making, or causing or permitting to be made or published, any false, untrue, or deceptive statement or representation, by way of advertisement or otherwise, concerning the grade, quality, quantity, substance, character, nature, origin, size, or preparation, or in any other material respect, of any product of the industry sold or offered for sale, having the tendency, capacity, or effect to mislead or deceive purchasers or prospective purchasers, is an unfair trade practice.

RULE 4.

The defamation of competitors by falsely imputing to them dishonorable conduct, inability to perform contracts, questionable credit standing, or by other false representations, or the false disparagement of the grade or quality of their goods, with the tendency, capacity, or effect of misleading or deceiving purchasers or prospective purchasers, or with the tendency, capacity, or effect of unduly hampering, injuring, or prejudicing such competitors in the conduct of their businesses, is an unfair trade practice.

RULE 5.

Wilfully inducing or attempting to induce the breach of existing contract or contracts between competitors and their customers or their suppliers, by any false or deceptive means whatsoever, or wilfully interfering with or obstructing the performance of any such contractual duties or services by any such means, with the purpose and effect of unduly hampering, injuring, or prejudicing competitors in their businesses, is an unfair trade practice.

RULE 6.

The publishing or circulating by any member of the industry of false or misleading price quotations, price lists, terms of sale, or discounts, having the tendency, capacity, or effect to mislead or deceive purchasers or prospective purchasers, is an unfair trade practice.

RULE 7.

Price discrimination, as between purchasers of industry products, whether in the form of discounts, allowances, terms, services, or otherwise, contrary to Section 2 of the Clayton Act, is an unfair trade practice.

RULE 8.

The secret payment or allowance of rebates, refunds, excess allowances, or unearned commissions, credits, or discounts, whether in the form of money, free goods, extras, or otherwise, or secretly extend-

ing to certain purchasers special services or privileges not extended to all purchasers under like terms and conditions, with the intent and with the effect of injuring a competitor and where the effect may be to substantially lessen competition or tend to create a monopoly or to unreasonably restrain trade, is an unfair trade practice.

RULE 9.

Directly or indirectly to give, or permit to be given, or offer to give, money or anything of value to agents, employees, or representatives of customers or prospective customers, or to agents, employees, or representatives of competitors' customers or prospective customers, without the knowledge of their employers or principals, as an inducement to influence their employers or principals to purchase or contract to purchase industry products from the maker of such gift or offer or to influence such employers or principals to refrain from dealing or contracting to deal with competitors, is an unfair trade practice.

RULE 10.

The circulation of threats of suit for infringement of patent or trade-mark among customers or prospective customers of competitors, not made in good faith but for the purpose or with the effect of harassing or intimidating customers or prospective customers or of unduly hampering, injuring, or prejudicing competitors in their businesses, is an unfair trade practice.

RULE 11.

The offering for sale or the selling of goods below cost, with the intent and with the effect of injuring a competitor and where the effect may be to substantially lessen competition or tend to create a monopoly or to unreasonably restrain trade, is an unfair trade practice, cost being determined by including all elements recognized by good accounting practices.

Promulgated by the Federal Trade Commission November 13, 1935.

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TRADE PRACTICE RULES
FOR THE
VEGETABLE IVORY BUTTON INDUSTRY
PROMULGATED MARCH 14, 1936

STATEMENT BY THE COMMISSION

Trade practice rules were approved and promulgated by the Commission under its trade practice conference procedure for the Vegetable Ivory Button Industry. The application for a trade practice conference and approval of rules was made by the Vegetable Ivory Button Manufacturers' Association. In the course of the proceedings opportunity for presentation of views of all persons interested in or affected by the proposed rules was given and conferences held with industry representatives. This industry is engaged in manufacturing buttons from the nut of palms grown in Central and South America.

According to information furnished, the members of the Vegetable Ivory Button Manufacturers' Association represent over 80 percent of this industry in the United States as to volume of production and number of concerns engaged in the industry. It was reported that the industry has an invested capital of approximately \$5,000,000, including plant, machinery, and equipment, and employs between 1,200 and 1,500 wage earners.

The rules approved by the Commission have been placed under Group I, as prohibiting illegal competitive practices.

THE RULES
GROUP I*

RULE 1.

The use of false or deceptive selling methods or false or deceptive credit terms which have the tendency, capacity, or effect of misleading or deceiving purchasers or prospective purchasers is an unfair trade practice.

RULE 2.

The false or deceptive marking or branding of products of the industry for the purpose or with the capacity, tendency, or effect of misleading or deceiving purchasers, prospective purchasers, or the consuming public with respect to the grade, quality, quantity, use, size, material, content, origin, preparation, manufacture, or distribution of such products, or in any other material respect, is an unfair trade practice.

*See page . . . for headnote applicable to Group I Rules.

RULE 3.

The making, or causing or permitting to be made or published, any false, untrue, or deceptive statement or representation, by way of advertisement or otherwise, concerning the grade, quality, quantity, use, size, material, content, origin, preparation, manufacture, or distribution of any industry products, or in any other material respect, with the purpose or with the capacity, tendency, or effect of misleading or deceiving purchasers, prospective purchasers, or the consuming public, is an unfair trade practice.

RULE 4.

Defamation of competitors by falsely imputing to them dishonorable conduct, inability to perform contracts, questionable credit standing, or by other false representations, or the false disparagement of the grade, quality, or manufacture of the products of competitors, or of their business methods, selling prices, values, credit terms, policies, or services, with the capacity, tendency, or effect of misleading or deceiving purchasers or prospective purchasers and the tendency to injuriously affect the business of such competitors, is an unfair trade practice.

RULE 5.

The circulation of threats of suit for infringement of patents or trade-marks among customers or prospective customers of a competitor, not made in good faith but for the purpose of harassing or intimidating such customers or prospective customers or otherwise prejudicing or injuring competitors in their businesses, is an unfair trade practice.

RULE 6.

The secret payment or allowance of rebates, refunds, commissions, credits, unearned discounts or allowances, whether in the form of money, or disguised as free samples to purchasers or in some other form of disguise, or secretly extending or granting to certain purchasers special allowances on the return or exchange of unused goods or other special privileges or services not extended or granted to all purchasers under like terms and conditions, with the intent and the effect of thereby injuring a competitor and where the effect may be to substantially lessen competition, or tend to create a monopoly, or unreasonably restrain trade, is an unfair trade practice.

RULE 7.

It is an unfair trade practice for a member of the industry directly or indirectly to give or offer to give, or permit or cause to be given, money or anything of value to agents, employees, or representatives of customers or prospective customers, or to agents, employees, or

representatives of competitors' customers or prospective customers, without the knowledge of their employers or principals, as an inducement to influence their employers or principals to purchase or contract to purchase products manufactured or sold by such industry member or the maker of such gift or offer or to influence such employers or principals to refrain from dealing in the products of competitors or from dealing or contracting to deal with competitors.

RULE 8.

Wilfully inducing or attempting to induce, by any false or deceptive means whatsoever, the breach of any lawful contract or contracts existing between competitors and their customers or their suppliers, or wilfully interfering with or obstructing the performance of any such contractual duties or services, with the purpose and effect of unduly hampering, injuring, or embarrassing competitors in their businesses, is an unfair trade practice.

RULE 9.

Securing information from competitors concerning their businesses by false or misleading statements or representations or by false impersonations of one in authority and the wrongful use thereof to unduly hinder or stifle the competition of such competitors is an unfair trade practice.

RULE 10.

It is an unfair trade practice for any member of the industry engaged in interstate commerce in the course of such commerce either directly or indirectly to discriminate in price between different purchasers of industry products sold for use, consumption, or resale within the United States or any place subject to its jurisdiction (whether in the form of price differentials, discounts, terms of payment, transportation allowances, free goods, services, or otherwise) and where the effect of such discrimination may be to substantially lessen competition or tend to create a monopoly in any line of commerce: *Provided*, That nothing herein contained shall prevent discrimination in price between purchasers of commodities on account of differences in the grade, quality, or quantity of the commodity sold, or that makes only due allowance for difference in the cost of selling or transportation, or discrimination in price in the same or different communities made in good faith to meet competition: *And provided further*, That nothing herein contained shall prevent persons engaged in selling goods, wares, or merchandise in commerce from selecting their own customers in bona fide transactions and not in restraint of trade.

RULE 11.

The practice of imitating or causing to be imitated, or directly or indirectly promoting or aiding the imitation of, the trade-marks,

trade names, or other exclusively owned symbols or marks of identification of competitors, or the exclusively owned patterns of competitors which have not been directly or by operation of law dedicated to the public, having the capacity, tendency, or effect of misleading or deceiving purchasers or prospective purchasers or the consuming public, is an unfair trade practice.

RULE 12.

The practice of selling goods below the seller's cost, with the intent and with the effect of injuring a competitor and where the effect may be to substantially lessen competition or tend to create a monopoly or unreasonably restrain trade, is an unfair trade practice; all elements recognized by good accounting practice as proper elements of such cost shall be included in determining cost under this rule.

RULE 13.

The practice of using any product of the industry as a "loss leader" to induce the purchase of other merchandise, the sale of which merchandise is used to recoup the loss sustained on the "loss leader" product so sold, with the tendency or capacity to mislead or deceive purchasers or prospective purchasers and which unfairly diverts trade from or otherwise injures competitors, is an unfair trade practice.

GROUP II*

RULE A.

The practice of shipping goods on approval or on consignment or pretended consignment, which goods have not been previously requested or ordered, is condemned by the industry.

A Committee on Trade Practices is hereby created by the industry to cooperate with the Federal Trade Commission and to perform such acts as may be legal and proper to put these rules into effect.

Promulgated by the Federal Trade Commission March 14, 1936.

* See page VIII for headnote applicable to Group II Rules.

TRADE PRACTICE RULES
FOR THE
PAPER DRINKING STRAW MANUFACTURING INDUSTRY
PROMULGATED JULY 3, 1936

STATEMENT BY THE COMMISSION

Trade practice rules were approved and promulgated by the Commission under its trade practice conference procedure for the Paper Drinking Straw Manufacturing Industry. The application for a trade practice conference and approval of rules was made by a Committee said to represent approximately 80 percent of the members of the industry from the standpoint of numbers. In the course of the proceedings opportunity for presentation of views of all persons interested in or affected by the proposed rules was given and conferences held with industry representatives.

Members of this industry are engaged in manufacturing paper tubes especially adapted for and known as paper "drinking straws." These are produced in the form of both bulk and wrapped straws. The individually wrapped sanitary drinking tubes, originated some thirty years ago, have become in the main drinking straws. In contradistinction to the wrapped "straws," those packed in cartons and not wrapped separately or in twos in cigarette or tissue paper are referred to in the industry as "bulk straws." "Straws" are exported to England, South America, South Africa, New Zealand, and many other foreign countries. All members of the industry, it is said, are engaged in the manufacture and sale of bulk straws. Many of these, either directly or through separate companies, are also engaged in the business of wrapping straws. The annual volume of sales is reported at this time to be approximately \$1,000,000, with nearly 500 persons employed in the various plants.

The rules approved by the Commission have been placed under Group I, as prohibiting illegal competitive practices.

THE RULES
GROUP I*

RULE 1.

The practice of selling goods below the seller's cost, with the intent and with the effect of injuring a competitor and where the effect may be to substantially lessen competition or tend to create a monopoly or unreasonably restrain trade, is an unfair trade practice; all elements

* See page VIII for headnote applicable to Group I Rules.

recognized by good accounting practice as proper elements of such cost shall be included in determining cost under this rule.

RULE 2.

The false marking or branding of products of the industry, with the tendency, capacity, or effect of misleading or deceiving purchasers with respect to the grade, quality, quantity, substance, character, nature, origin, size, or preparation, or in any other material respect, of the goods purchased, is an unfair trade practice.

RULE 3.

The imitation of the trade-marks, trade names, brands, labels, or other marks of identification of competitors, having the tendency, capacity, or effect of misleading or deceiving purchasers or prospective purchasers, is an unfair trade practice.

RULE 4.

The making, or causing or permitting to be made or published, any false, untrue, or deceptive statement or representation, by way of advertisement or otherwise, concerning the grade, quality, quantity, substance, character, nature, origin, size, or preparation, or in any other material respect, of any product of the industry sold or offered for sale, having the tendency, capacity, or effect of misleading or deceiving purchasers or prospective purchasers, is an unfair trade practice.

RULE 5.

The defamation of competitors by falsely imputing to them dishonorable conduct, inability to perform contracts, questionable credit standing, or by other false representations, or the false disparagement of the grade or quality of their goods, with the tendency, capacity, or effect of misleading or deceiving purchasers or prospective purchasers, or with the tendency, capacity, or effect of unduly hampering, injuring, or prejudicing such competitors in the conduct of their businesses, is an unfair trade practice.

RULE 6.

Wilfully inducing or attempting to induce the breach of existing contract or contracts between competitors and their customers or their suppliers by any false or deceptive means whatsoever, or wilfully interfering with or obstructing the performance of any such contractual duties or services by any such means, with the purpose and effect of unduly hampering, injuring, or prejudicing competitors in their businesses, is an unfair trade practice.

RULE 7.

The publishing or circulating by any member of the industry of

false or misleading price quotations, price lists, terms of sale, or discounts, having the tendency, capacity, or effect of misleading or deceiving purchasers or prospective purchasers, is an unfair trade practice.

RULE 8.

Price discrimination, as between purchasers of industry products, whether in the form of discounts, allowances, terms, services, or otherwise, contrary to Section 2 of the Clayton Act, is an unfair trade practice.

RULE 9.

The secret payment or allowance of rebates, refunds, excess allowances, or unearned commissions, credits, or discounts, whether in the form of money, free goods, extras, or otherwise, or secretly extending to certain purchasers special services or privileges not extended to all purchasers under like terms and conditions, with the intent and with the effect of injuring a competitor and where the effect may be to substantially lessen competition or tend to create a monopoly or to unreasonably restrain trade, is an unfair trade practice.

RULE 10.

Directly or indirectly to give, or permit to be given, or offer to give, money or anything of value to agents, employees, or representatives of customers or prospective customers, or to agents, employees, or representatives of competitors' customers or prospective customers, without the knowledge of their employers or principals, as an inducement to influence their employers or principals to purchase or contract to purchase industry products from the maker of such gift or offer or to influence such employers or principals to refrain from dealing or contracting to deal with competitors, is an unfair trade practice.

RULE 11.

The circulation of threats of suit for infringement of patent or trade-mark among customers or prospective customers of competitors, not made in good faith but for the purpose or with the effect of harassing or intimidating customers or prospective customers or of unduly hampering, injuring, or prejudicing competitors in their businesses, is an unfair trade practice.

RULE 12.

The practice of coercing the purchase of one or more products as a prerequisite to the purchase of one or more other products, where the effect may be to substantially lessen competition or tend to create a monopoly or to unreasonably restrain trade, is an unfair trade practice.

RULE 13.

Withholding from or inserting in the invoice statements which make the invoice a false record, wholly or in part, of the transaction repre-

sented on the face thereof, with the purpose or effect of misleading or deceiving purchasers or prospective purchasers, is an unfair trade practice.

RULE 14.

The practice by a member of the industry of selling or marketing industry products through a pretended independent concern to induce the purchasing public to believe such concern is independent and in competition with the said member of the industry owning or controlling such concern, when such is not the fact, with the tendency or capacity to mislead or deceive purchasers, prospective purchasers, or the consuming public, is an unfair trade practice.

Promulgated by the Federal Trade Commission July 3, 1936.

TRADE PRACTICE RULES

FOR THE

BUFF AND POLISHING WHEEL MANUFACTURING
INDUSTRY

PROMULGATED JULY 9, 1936

STATEMENT BY THE COMMISSION

Trade practice rules were approved and promulgated by the Federal Trade Commission under its trade practice conference procedure for the Buff and Polishing Wheel Manufacturing Industry. The application for a trade practice conference and approval of rules was made by the Buff and Polishing Wheel Manufacturers' Association, Incorporated, said to represent 66 percent of the total number of firms engaged in the business of manufacturing and selling buffs and polishing wheels. According to information furnished, the members of this association represented 94 percent of the total volume of sales in the industry for the year 1935. In the course of the proceedings opportunity for presentation of views of all persons interested in or affected by the proposed rules was given and conferences held with industry representatives.

Members of the Buff and Polishing Wheel Manufacturing Industry are engaged in the business of manufacturing and selling buffs and polishing wheels, used for wiping, cleaning, or oiling and in connection with abrasives for the purpose of producing finished surfaces on metals or on other materials.

The volume of sales by the industry for the year 1935 is said to have amounted to over \$4,000,000. Approximately 1,200 employees, it was stated, are employed in the industry in both productive and non-productive capacities.

The rules approved by the Commission have been placed under Group I, as prohibiting illegal competitive practices.

THE RULES

GROUP I*

RULE 1.

It is an unfair trade practice for a member of the industry directly or indirectly to give or offer to give, or permit or cause to be given, money or anything of value to agents, employees, or representatives of customers or prospective customers, or to agents, employees, or representatives of competitors' customers or prospective customers, with-

* See page VIII for headnote applicable to Group I Rules.

out the knowledge of their employers or principals, as an inducement to influence their employers or principals to purchase or contract to purchase products manufactured or sold by such industry member or the maker of such gift or offer or to influence such employers or principals to refrain from dealing in the products of competitors or from dealing or contracting to deal with competitors.

RULE 2.

Securing information from competitors concerning their businesses by false or misleading statements or representations or by false impersonations of one in authority and the wrongful use thereof to unduly hinder or stifle the competition of such competitors is an unfair trade practice.

RULE 3.

The defamation of competitors by falsely imputing to them dishonorable conduct, inability to perform contracts, questionable credit standing, or by other false representations, or the false disparagement of the grade, quality, or manufacture of the products of competitors, or of their business methods, selling prices, values, credit terms, policies, or services, or conditions of employment, with the tendency, capacity, or effect of misleading or deceiving purchasers, prospective purchasers, or the consuming public, is an unfair trade practice.

RULE 4.

The secret payment or allowance of rebates, refunds, commissions, or unearned discounts, whether in the form of money or otherwise, or secretly extending to certain purchasers special services or privileges not extended to all purchasers under like terms and conditions, with the intent and with the effect of injuring a competitor and where the effect may be to substantially lessen competition or tend to create a monopoly or unreasonably restrain trade, is an unfair trade practice.

RULE 5.

Wilfully inducing or attempting to induce, by any false or deceptive means whatsoever, the breach of any lawful contract or contracts existing between competitors and their customers or their suppliers, or wilfully interfering with or obstructing the performance of any such contractual duties or services, with the purpose and effect of unduly hampering, injuring, or embarrassing competitors in their businesses, is an unfair trade practice.

RULE 6.

For any member of the industry knowingly to aid or abet another in the use of unfair trade practices is an unfair trade practice.

RULE 7.

The making, or causing or permitting to be made or published, any false, untrue, or deceptive statement or representation, by way of advertisement or otherwise, concerning the grade, quality, quantity, substance, character, nature, origin, size, production costs, or preparation of any product of the industry, or in any other material respect, having the tendency or capacity to mislead or deceive purchasers, prospective purchasers, or the consuming public, is an unfair trade practice.

RULE 8.

Withholding from or inserting in the invoice statements which make the invoice a false record, wholly or in part, of the transaction represented on the face thereof, with the purpose or effect of misleading or deceiving purchasers, prospective purchasers, or the consuming public, is an unfair trade practice.

RULE 9.

It is an unfair trade practice for any member of the industry engaged in interstate commerce, in the course of such commerce, either directly or indirectly, to discriminate in price between different purchasers of industry products sold for use, consumption, or resale within the United States or any place subject to its jurisdiction, whether in the form of prices, price differentials, discounts, terms of sale, services, or excessive allowances or adjustments for alleged defective merchandise or alleged shortage, or otherwise, and where the effect of such discrimination may be to substantially lessen competition or tend to create a monopoly in any line of commerce: *Provided*, That nothing herein contained shall prevent discrimination in price between purchasers of commodities on account of differences in the grade, quality, or quantity of the commodity sold, or that makes only due allowance for difference in the cost of selling or transportation, or discrimination in price in the same or different communities made in good faith to meet competition: *And provided further*, That nothing herein contained shall prevent persons engaged in selling goods, wares, or merchandise in commerce from selecting their own customers in bona fide transactions and not in restraint of trade.

RULE 10.

The practice of selling goods below the seller's cost, with the intent and with the effect of injuring a competitor and where the effect may be to substantially lessen competition or tend to create a monopoly or unreasonably restrain trade, is an unfair trade practice; all elements recognized by good accounting practice as proper elements of such cost shall be included in determining cost under this rule.

RULE 11.

The publishing or circulating by any member of the industry of

false or misleading price quotations, price lists, terms or conditions of sale, or reports as to transportation costs, production, or sales, with the purpose and tendency or capacity to mislead or deceive purchasers, prospective purchasers, or the consuming public, is an unfair trade practice.

RULE 12.

For any person, firm, partnership, corporation, or association to enter into or take part, directly or indirectly, in any agreement, understanding, combination, or conspiracy with one or more persons, firms, partnerships, corporations, or associations to fix, maintain, or enhance prices or suppress competition between or among them in the matter of prices or terms of sale with respect to any product or products of the industry or allied products, or by any other unlawful means to fix, maintain, or enhance prices or suppress competition between or among them in the matter of prices or terms of sale, is an unfair trade practice.

GROUP II*

RULE A.

It is the judgment of the industry that each member should independently keep proper and accurate records for determining his costs.

RULE B.

The industry approves the practice of handling business disputes between members of the industry and their customers in a fair and reasonable manner, coupled with a spirit of moderation and good will, and every effort should be made by the disputants themselves to compose their differences. If unable to do so they should, if possible, submit these disputes to arbitration.

A Committee on Trade Practices is hereby created by the industry to cooperate with the Federal Trade Commission and to perform such acts as may be legal and proper to put these rules into effect.

Promulgated by the Federal Trade Commission July 9, 1936.

* See page VIII for headnote applicable to Group II Rules.

**TRADE PRACTICE RULES
FOR THE
FLAT GLASS MANUFACTURING INDUSTRY
PROMULGATED JULY 23, 1936**

STATEMENT BY THE COMMISSION

In accordance with the Commission's instructions, negotiations were had with representatives of the Flat Glass Industry with the view of so amending the previously promulgated rules for the industry as would bring the rules into conformity with the Commission's rulings as to Group I and Group II rules. As a result of such negotiations and acceptance of the amended rules by the industry, the Commission has promulgated the rules herewith for Manufacturers and Distributors of Flat Glass. These rules are in substitution of the trade practice conference rules for this industry promulgated by the Commission October 15, 1928.

As herein set out, the rules are classified under Group I and Group II. Those under Group I are approved by the Commission as prohibiting illegal competitive practices; those under Group II are received by the Commission as expressions of the industry.

The principal products manufactured and distributed by this industry, it is reported, are plate glass, window glass, safety glass, rough and rolled glass, figured glass, wire glass, polished wire glass, structural glass, and store-front construction materials. Many of the distributors, it is stated, also do a glazing contract business in addition to the distributing end of their business.

It is estimated that the annual volume of business of the industry is about \$200,000,000, and the invested capital approximately \$125,000,000. Twenty-five thousand wage earners are said to be employed in the industry.

THE RULES

GROUP I*

RULE 1.

Wilfully inducing or attempting to induce, by any false or deceptive means whatsoever, the breach of any lawful contract or contracts existing between competitors and their customers or their suppliers, or wilfully interfering with or obstructing the performance of any such contractual duties or services, with the purpose and effect of unduly

* See page VIII for headnote applicable to Group I Rules.

hampering, injuring, or embarrassing competitors in their businesses, is an unfair trade practice.

RULE 2.

The false or deceptive marking or branding of products of the industry for the purpose or with the capacity, tendency, or effect of misleading or deceiving purchasers, prospective purchasers, or the consuming public with respect to the grade, quality, quantity, use, size, material, content, origin, preparation, manufacture, or distribution of such products, or in any other material respect, is an unfair trade practice.

RULE 3.

The sale or offering for sale of any product of the industry with the intent and with the effect of deceiving purchasers, prospective purchasers, or the consuming public as to the quantity, quality, substance, or size of such product, is an unfair trade practice.

RULE 4.

In the sale, offering for sale, or shipment of window, sheet, or other flat glass, the failure to brand, mark, or identify such glass so as to disclose its true character, where such failure to brand, mark, or identify such glass has the tendency, capacity, or effect of misleading or deceiving purchasers, prospective purchasers, or the consuming public, is an unfair trade practice.

RULE 5.

The secret payment or allowance of rebates, refunds, commissions, credits, or unearned discounts, whether in the form of money or otherwise, or secretly extending to certain purchasers special services or privileges not extended to all purchasers under like terms and conditions, with the intent and with the effect of injuring a competitor and where the effect may be to substantially lessen competition or tend to create a monopoly or unreasonably restrain trade, is an unfair trade practice.

RULE 6.

Price discrimination contrary to Section 2 of the Clayton Act as amended by the Act of Congress approved June 19, 1936 (Public, No. 692, 74th Congress) is an unfair trade practice.

RULE 7.

The practice of selling goods below the seller's cost, with the intent and with the effect of injuring a competitor and where the effect may be to substantially lessen competition or tend to create a monopoly or unreasonably restrain trade, is an unfair trade practice; all elements

recognized by good accounting practice as proper elements of such cost shall be included in determining cost under this rule.

GROUP II*

RULE A.

As the shipment by manufacturers of window glass without labels on each light showing the quality of such glass makes possible the easy substitution of a lower quality of glass for a higher quality, particularly when such glass is removed for shipment or use from the original factory container, the industry hereby records its approval of the labeling by manufacturers in accordance with accepted standards of the industry of each light of window glass showing its thickness and quality as a means of preventing deception of the purchasing public.

RULE B.

The industry approves the practice of handling business disputes between members of the industry and their customers in a fair and reasonable manner, coupled with a spirit of moderation and good will, and every effort should be made by the disputants themselves to compose their differences. If unable to do so they should, if possible, submit these disputes to arbitration.

RULE C.

Contracts, either written or oral, are business obligations which should be performed in letter and in spirit. The repudiation of contracts by sellers on a rising market or by buyers on a declining market is equally reprehensible and is condemned by the industry.

Promulgated by the Federal Trade Commission July 23, 1936.

* See page VIII for headnote applicable to Group II Rules.

TRADE PRACTICE RULES

FOR THE

JUVENILE WHEEL GOODS MANUFACTURING INDUSTRY

PROMULGATED JULY 30, 1936

STATEMENT BY THE COMMISSION

Trade practice conference rules for the Juvenile Wheel Goods Manufacturing Industry, a division of the Toy and Playthings Industry, are promulgated by the Federal Trade Commission under its trade practice conference procedure. The rules approved by the Commission have been placed in Group I, as prohibiting illegal competitive practices. The rules in Group II are received by the Commission as expressions of the industry. Application for the trade practice conference was originally made by the Juvenile Wheel Goods Association. Upon the application due proceedings were had, including hearings and conferences with industry representatives and other interested or affected parties.

Items manufactured by members of the industry include the following: Velocipedes and tricycles; sidewalk cycles (with wheels 14 inches in diameter and under); scooters; three-wheel play cars (with or without pedals); children's automobiles; children's wagons (coasters, express, and play); children's wheelbarrows; baby walkers and tenders; parts of children's wheel goods for sale as such; and wheel goods not specified by kind.

At the time the application was filed, it was reported that the production by members of the industry in 1934, the latest period for which figures were available, amounted to approximately \$10,000,000. It was estimated that between 5,000 and 10,000 persons were employed in the industry.

THE RULES

GROUP I*

RULE 1.

The practice of selling goods below the seller's cost, with the intent and with the effect of injuring a competitor and where the effect may be to substantially lessen competition or tend to create a monopoly or unreasonably restrain trade, is an unfair trade practice; all elements recognized by good accounting practice as proper elements of such cost shall be included in determining cost under this rule.

* See page VIII for headnote applicable to Group I Rules.

RULE 2.

The secret payment or allowance of rebates, refunds, commissions, or unearned discounts, whether in the form of money or otherwise, or secretly extending to certain purchasers free samples or other special services or privileges not extended to all purchasers under like terms and conditions, with the intent and with the effect of injuring a competitor and where the effect may be to substantially lessen competition or tend to create a monopoly or to unreasonably restrain trade, is an unfair trade practice.

RULE 3.

The making, or causing or permitting to be made or published, any false, untrue, or deceptive statement or representation, by way of advertisement or otherwise, concerning the character of a member's business or the plan of operation thereof, or concerning the grade, quality, quantity, substance, character, nature, origin, size, or preparation of any product of the industry, having the tendency or capacity to mislead or deceive purchasers or prospective purchasers and the tendency to injuriously affect the business of competitors, is an unfair trade practice.

RULE 4.

Directly or indirectly to give, or permit to be given, or offer to give, money or anything of value to agents, employees, or representatives of customers or prospective customers, or to agents, employees, or representatives of competitors' customers or prospective customers, without the knowledge of their employers or principals, as an inducement to influence their employers or principals to purchase or contract to purchase industry products from the maker of such gift or offer or to influence such employers or principals to refrain from dealing or contracting to deal with competitors, is an unfair trade practice.

RULE 5.

Wilfully inducing or attempting to induce the breach of any lawfully existing contract or contracts between competitors and their customers by any false or deceptive means whatsoever, or wilfully interfering with or obstructing the performance of any such contractual duties or services, with the purpose and effect of unduly hampering, injuring, or embarrassing competitors in their businesses, is an unfair trade practice.

RULE 6.

The offering or giving of prizes, premiums, or gifts in connection with the sale of products, or as an inducement thereto, by any scheme

which involves lottery, misrepresentation, or fraud, is an unfair trade practice.

RULE 7.

The defamation of competitors by falsely imputing to them dishonorable conduct, inability to perform contracts, questionable credit standing, or by other false representations, or the false disparagement of the grade or quality of their goods, with the tendency or capacity to mislead or deceive purchasers or prospective purchasers, is an unfair trade practice.

RULE 8.

The circulation of threats of suit for infringement of patents or trade-marks among customers or prospective customers of a competitor, not made in good faith but for the purpose or with the effect of harassing or intimidating such customers or prospective customers or unfairly prejudicing or injuring competitors in their businesses, is an unfair trade practice.

RULE 9.

Securing information from competitors concerning their businesses by false or misleading statements or representations or by false impersonation of one in authority and the wrongful use thereof to unduly hinder or stifle the competition of such competitors is an unfair trade practice.

RULE 10.

The selling by manufacturers in this industry of regular lines of merchandise as "close-outs" for the purpose of inducing purchasers to believe they are receiving bargains when such is not the case, with the tendency or capacity to mislead or deceive purchasers or prospective purchasers, is an unfair trade practice.

RULE 11.

Price discrimination contrary to Section 2 of the Clayton Act as amended by the Act of Congress approved June 19, 1936 (Public, No. 692, 74th Congress) is an unfair trade practice.

RULE 12.

The shipping or delivering of products which do not conform to the samples submitted or representations made prior to securing the orders, without the consent of the purchasers to such substitution and with the effect of deceiving or misleading purchasers, is an unfair trade practice.

RULE 13.

The imitation of the trade-marks, trade names, or other marks of identification of competitors, having the tendency or capacity to

mislead or deceive purchasers or prospective purchasers, is an unfair trade practice.

RULE 14.

For any manufacturer in this industry knowingly to aid or abet a person, firm, or corporation in the use of unfair trade practices is an unfair trade practice.

RULE 15.

Withholding from or inserting in the invoice statements which make the invoice a false record, wholly or in part, of the transaction represented on the face thereof, with the purpose or effect of misleading or deceiving purchasers or prospective purchasers, is an unfair trade practice.

RULE 16.

For any person, firm, partnership, corporation, or association to enter into or take part, directly or indirectly, in any agreement, understanding, combination, conspiracy, or concerted action with one or more other persons, firms, partnerships, corporations, or associations to fix, maintain, or enhance prices or to fix or control terms of sale with respect to any product or products of the industry or allied products, or to unreasonably restrain trade, or by any other unlawful means to fix, maintain, or enhance prices, to fix or control terms of sale, or otherwise to unreasonably restrain trade, is an unfair trade practice; and it is not contemplated or intended that any other rule in this trade practice agreement shall be construed or used to effectuate or promote any of the practices condemned in this rule.

GROUP II*

RULE A.

It is the judgment of the industry that each member should independently keep proper and accurate records for determining his costs.

RULE B.

The practice of shipping goods on approval or on consignment or pretended consignment, which goods have not been previously requested or ordered, is condemned by the industry.

RULE C.

It is the judgment of the industry that it is in the interest of the public that each manufacturer, while fixing individually his own prices, shall openly publish the current list prices of his products with descriptions and specifications thereof and that he promptly and openly publish any revisions thereof.

Promulgated by the Federal Trade Commission July 30, 1936.

* See page VIII for headnote applicable to Group II Rules.

TRADE PRACTICE RULES

FOR THE

LADIES' HANDBAG MANUFACTURING INDUSTRY

PROMULGATED AUGUST 18, 1936

STATEMENT BY THE COMMISSION

Trade practice conference rules for the Ladies' Handbag Manufacturing Industry, as herein set forth, are promulgated by the Commission under its trade practice conference procedure. Application for the trade practice conference and approval of the rules was made by the National Authority for the Ladies' Handbag Industry, New York City, the members of which were said to represent about 82 percent of the total volume of sales in the industry. During the course of the proceedings opportunity for the presentation of views of all persons interested in or affected by the proposed rules was given and conferences held with industry representatives.

According to information furnished by the applicant, the manufacture of ladies' handbags is carried on in the States of New York, Massachusetts, Connecticut, Rhode Island, New Jersey, Pennsylvania, Maryland, Florida, Illinois, Wisconsin, Missouri, Washington, California, Virginia, Texas, and Ohio. The wholesale sales volume for the industry for the year ending March 25, 1935, was estimated at \$33,000,000. Between 12,000 and 15,000 persons were said to be employed in the industry.

As contained herein, the rules are classified under Group I and Group II. The rules under Group I are approved by the Commission as prohibiting illegal competitive practices; those under Group II are received by the Commission as expressions of the trade.

THE RULES

GROUP I*

RULE 1.

The making, or causing or permitting to be made or published, any false, untrue, or deceptive statement or representation, by way of advertisement or otherwise, concerning the grade, quality, quantity, substance, character, nature, origin, size, or preparation of any product of the industry, or concerning credit terms, values, policies, services, or the nature or form of the business conducted, having the tendency or capacity to mislead or deceive purchasers or prospective purchasers, is an unfair trade practice.

* See page VIII for headnote applicable to Group I Rules.

RULE 2.

The defamation of competitors by falsely imputing to them dishonorable conduct, inability to perform contracts, questionable credit standing, or by other false representations, or the false disparagement of the grade or quality of the goods of competitors, their credit terms, values, policies, services, or the nature or form of the business conducted, with the tendency or capacity to mislead or deceive purchasers or prospective purchasers, is an unfair trade practice.

RULE 3.

The practice of selling goods below the seller's cost, with the intent and with the effect of injuring a competitor and where the effect may be to substantially lessen competition or tend to create a monopoly or unreasonably restrain trade, is an unfair trade practice. All elements recognized by good accounting practice as proper elements of such cost shall be included in determining cost under this rule.

RULE 4.

Directly or indirectly to give, or permit to be given, or offer to give, money or anything of value to agents, employees, or representatives of customers or prospective customers, or to agents, employees, or representatives of competitors' customers or prospective customers, without the knowledge of their employers or principals, as an inducement to influence their employers or principals to purchase or contract to purchase industry products from the maker of such gift or offer or to influence such employers or principals to refrain from dealing or contracting to deal with competitors, is an unfair trade practice.

RULE 5.

The circulation of threats of suit for infringement of patents or trade-marks among customers or prospective customers of a competitor, not made in good faith but for the purpose of harassing or intimidating such customers or prospective customers or otherwise prejudicing or injuring competitors in their businesses, is an unfair trade practice.

RULE 6.

The secret payment or allowance of rebates, refunds, commissions, or unearned discounts, whether in the form of money or disguised as advertising allowances, forwarding or transportation charges, repair charges, or otherwise, or secretly extending to certain purchasers special services or privileges not extended to all purchasers under like terms and conditions, with the intent and with the effect of injuring competitors and where the effect may be to substantially lessen com-

petition or tend to create a monopoly or to unreasonably restrain trade, is an unfair trade practice.

RULE 7.

The practice of branding or marking or packing any products, or causing the same to be branded or marked or packed, in a manner which is calculated to or does deceive or mislead purchasers, prospective purchasers, or the consuming public with respect to the brand, grade, quality, value, quantity, origin, size, substance, character, nature, material, content, or preparation of such products, is an unfair trade practice.

RULE 8.

Price discrimination contrary to Section 2 of the Clayton Act as amended by the Act of Congress approved June 19, 1936 (Public, No. 692, 74th Congress) is an unfair trade practice.

RULE 9.

The imitation of the trade-marks, trade names, or other marks of identification of competitors, having the tendency or capacity to mislead or deceive purchasers or prospective purchasers, is an unfair trade practice.

RULE 10.

The practice of coercing the purchase of one or more products as a prerequisite to the purchase of one or more other products, where the effect may be to substantially lessen competition or tend to create a monopoly or to unreasonably restrain trade, is an unfair trade practice.

RULE 11.

Wilfully inducing or attempting to induce the breach of any lawfully existing contract or contracts between competitors and their customers or their suppliers by any false or deceptive means whatsoever, or wilfully interfering with or obstructing the performance of any such contractual duties or services, with the purpose and effect of unduly hampering, injuring, or embarrassing competitors in their businesses, is an unfair trade practice.

RULE 12.

Withholding from or inserting in the invoice, bill of lading, or other document of title statements which make the invoice, bill of lading, or other document of title a false record, wholly or in part, of the transaction represented on the face thereof, with the purpose or effect of misleading or deceiving purchasers, prospective purchasers, or the consuming public, is an unfair trade practice.

RULE 13.

For any member of the industry knowingly to aid or abet another in the use of unfair trade practices is an unfair trade practice.

RULE 14.

The publishing or circulating by any member of the industry of false or misleading price quotations, price lists, or terms of sale, having the tendency or capacity to mislead or deceive purchasers, prospective purchasers, or the consuming public, is an unfair trade practice.

GROUP II*

RULE A.

The industry disapproves of the practice of accepting the return of merchandise after the same has been in the hands of the purchaser for an unreasonable length of time.

RULE B.

It is the judgment of the industry that each member should independently keep proper and accurate records for determining his costs.

Promulgated by the Federal Trade Commission August 18, 1936.

* See page VIII for headnote applicable to Group II Rules.

TRADE PRACTICE RULES

FOR THE

PRESERVE MANUFACTURING INDUSTRY

PROMULGATED SEPTEMBER 12, 1936

STATEMENT BY THE COMMISSION

Trade practice conference rules for the Preserve Manufacturing Industry, as herein set forth, are promulgated by the Commission under its trade practice conference procedure.

The application for establishment of trade practice rules for the industry was made by the National Preservers Association, Incorporated, which association, according to information received, represents in its membership approximately 70 percent of the total production of the industry. In the course of the proceedings public hearings were held and opportunity afforded for hearing of all interested or affected parties. Due consideration was given to the suggestions and views presented.

The total value of manufactured products of the industry for the year 1934 was estimated at \$30,000,000, and substantially higher for 1935, about two-thirds of which covered products manufactured by the applicants for the trade practice conference.

The trade practice rules appearing herein under Group I are approved by the Commission as prohibiting illegal competitive practices.

THE RULES

GROUP I*

RULE 1.

The practice of selling, advertising, describing, branding, marking, labeling, or packing of fruit preserves, fruit jams, fruit jellies, or apple butter, or any simulation thereof, in a manner which is calculated to mislead or deceive, or has the tendency and capacity or effect of misleading or deceiving, purchasers, prospective purchasers, or the consuming public with respect to the character, nature, content, grade, quality, quantity, substance, material, preparation, or manufacture of such product, or in any other material respect, is an unfair trade practice.

For purposes of such Rule 1.

(a) Preserve, fruit preserve, jam, fruit jam, are understood to mean the clean, sound fruit product possessing definite character.

* See page VIII for headnote applicable to Group I Rules.

istic flavor of the preserved fruit or fruits named on the label, made by cooking or concentrating to a suitable consistency properly prepared, clean, sound, entire edible portion of fresh fruit, cold-packed fruit, canned fruit, or a mixture of two or all of these, with sugar or with sugar and water, with or without spice or vinegar, or with such harmless organic acids as may be necessary to compensate for natural acid deficiency of the particular fruit used, but excluding acids or acid salts generally recognized as chemical preservatives, and in the preparation of which fruit product there is used not less than forty-five (45) pounds of actual fruit to each fifty-five (55) pounds of sugar. In the case of fruits deficient in pectin, or whose composition or texture prevents the preparation of preserve or jam as defined herein of the desired consistency, nothing herein shall prevent the addition of small quantities of pectin or pectinous material. *Provided, however,* That if such pectin or pectinous material is added, the ratio of not less than forty-five (45) pounds of fruit to each fifty-five (55) pounds of sugar shall be maintained, and the finished product containing such added pectin shall contain not less than sixty-eight (68) per centum water-soluble solids derived from the fruit and sugar used in its manufacture, as determined by refractometer at twenty degrees (20°) centigrade without correction for the insoluble solids present.

(b) Jelly, fruit jelly, is understood to mean the clean, sound, semisolid, gelatinous fruit product possessing definite characteristic flavor of the fruit or fruits named on the label, made by concentrating to a suitable consistency the strained juice, or the water extract, from fresh fruit, from cold-packed fruit, from canned fruit, or from a mixture of two or all of these, with sugar. In the case of fruits whose composition prevents the preparation of jelly of the proper texture, nothing herein contained shall prevent the use of the small quantity of pectin or pectinous material necessary to produce the proper consistency; and in the use of fruits having a natural acid deficiency, nothing herein shall prevent the use of such harmless organic acids as may be necessary to compensate for natural acid deficiency of the particular fruit used, but excluding acids or acid salts generally recognized as chemical preservatives. *Provided, however,* That such jelly containing such added pectin or pectinous material or such added acidulants shall contain not less than sixty-five (65) per centum water-soluble solids derived from the fruit and sugar used in its manufacture, as determined by refractometer at twenty degrees (20°) centigrade, and its composition shall correspond to a ratio of not less than fifty (50)

pounds of actual pure fruit juice, exclusive of added water, to each fifty (50) pounds of sugar in the original batch.

(c) Apple butter is understood to mean the clean, sound product made by cooking or concentrating with sugar or apple juice, or both, the properly prepared, clean, sound, edible portion of apples (either fresh, cold-packed, canned, or evaporated) to a homogeneous, semisolid consistency, with or without vinegar, salt, and spice, or with such harmless organic acids as may be necessary to compensate for natural acid deficiency of the fruit used, but excluding acids or acid salts generally recognized as chemical preservatives; and which apple butter contains not less than forty-three (43) per centum water-soluble solids as determined by refractometer at twenty degrees (20°) centigrade without correction for the insoluble solids present, and be prepared with not more than twenty (20) pounds of sugar to each fifty (50) pounds of such edible portion of fresh apples, or of their equivalent in cold-packed, canned, or evaporated apples, exclusive of the cores, seeds, and skins.

(d) Corn syrup preserve, corn syrup jam, corn syrup jelly, and corn syrup apple butter are understood to be fruit products conforming, respectively, to those specified in paragraphs (a), (b), and (c) above, but in the manufacture of which corn syrup has been substituted wholly for sugar. Corn syrup and sugar preserve, corn syrup and sugar jam, corn syrup and sugar jelly, and corn syrup and sugar apple butter are understood to be fruit products conforming, respectively, to those specified in paragraphs (a), (b), and (c) above, but in the manufacture of which a combination of corn syrup with a substantial amount of sugar has been substituted for all sugar. Advertising, representing, branding, or labeling of any such products as preserve, jam, jelly, or apple butter without fully disclosing that the product is such corn syrup or corn syrup and sugar preserve, jam, jelly, or apple butter, as the case may be, with the capacity and tendency or effect of misleading or deceiving purchasers, prospective purchasers, or the consuming public, is an unfair trade practice within the meaning of Rule 1.

(e) Honey preserve, honey jam, honey jelly, honey apple butter, are understood to mean fruit products conforming, respectively, to those specified in paragraphs (a), (b), and (c) above, but in the manufacture of which honey has been substituted wholly for sugar. Advertising, representing, branding, or labeling of any such honey product without fully disclosing that the same is honey preserve, honey jam, honey jelly, or honey apple butter, as the case may be, or without setting forth the word "honey" as prominently or conspicuously as any other word used as descriptive of the

product, with the capacity and tendency or effect of misleading or deceiving purchasers, prospective purchasers, or the consuming public, is an unfair trade practice within the meaning of Rule 1.

(f) When advertising, representing, branding, or labeling any preserve, jam, or jelly containing substantial amounts of two or more fruits, although made in conformity with the applicable requirements of paragraphs marked (a), (b), (d), or (e), the kinds of fruit so contained in such products should be prominently and conspicuously disclosed and named on the label in the order of their predominance by weight. Advertising, representing, branding, or labeling of any preserve, jam, or jelly as containing two or more fruits when each such fruit is not present in substantial and characterizing amounts, with the capacity and tendency or effect of misleading or deceiving purchasers, prospective purchasers, or the consuming public, is an unfair trade practice within the meaning of Rule 1.

(g) The word "sugar" as hereinabove used means sucrose or dextrose, or a combination thereof.

RULE 2.

The practice of advertising, labeling, branding, selling, or offering for sale an imitation preserve, jam, jelly, or apple butter, without clearly and prominently disclosing therein that the product is such imitation, with the tendency and capacity or effect of misleading or deceiving purchasers, prospective purchasers, or the consuming public, is an unfair trade practice.

For the purposes of such Rule 2:

(a) Products which contain a smaller proportion of fruit than specified in the applicable requirements set forth in paragraphs marked (a), (b), (c), (d), and (e), or which otherwise fail to conform with the applicable minimum requirements set forth in such paragraphs, respectively, and which simulate or imitate preserves, jams, jellies, or apple butter as described in such paragraphs, and which are used or sold for the same purpose, except fruit pie filling, fruit sauce, fruit butter other than apple butter, mint, wine, and calves-foot jellies, described, represented, labeled, and sold as such, and preserved citrus fruit products, are understood to be imitation preserve, imitation jam, imitation jelly, or imitation apple butter, respectively; and to avoid deception and confusion of the purchasing public they should be described, represented, labeled, and sold as such respective imitation products.

RULE 3.

Withholding from or inserting in the invoice statements which make

the invoice a false record, wholly or in part, of the transaction represented on the face thereof, with the purpose or effect of misleading or deceiving purchasers, prospective purchasers, or the consuming public, is an unfair trade practice.

EXPLANATORY STATEMENT

These rules do not in any respect supplant, or relieve anyone of the necessity of complying with, the legal requirements of the pure food laws or other provision of law. They are established under the Federal Trade Commission Act for the purpose of more effectively stamping out unfair competitive practices in the interest of the public, and to assist in general law enforcement to this end.

Promulgated by the Federal Trade Commission September 12, 1936.

TRADE PRACTICE RULES

FOR THE

RUBBER TIRE INDUSTRY

PROMULGATED OCTOBER 17, 1936

STATEMENT BY THE COMMISSION

Trade practice rules for the Rubber Tire Industry, as herein set forth, were today promulgated by the Commission under its trade practice conference procedure. A general conference for the entire industry was held, under the auspices of the Commission, at the Stevens Hotel, Chicago, Illinois, June 4, 1936. At such conference proposed rules were adopted and submitted by the industry to the Federal Trade Commission for its approval.

The proposed rules were then tentatively passed upon by the Commission and released, with certain modifications, for a 15-day period upon public notice whereby opportunity was afforded to all interested or affected parties to present to the Commission their views regarding the same, including suggestions or objections, if any. Thereafter, some further amendments were adopted, and upon full consideration of the matter the rules as amended and herein set forth were approved by the Commission as to Group I, and as to Group II were received by the Commission as expressions of the industry.

The Rubber Tire Industry, for which these rules are promulgated, embraces the manufacturers of automotive tires and tubes and all distributing units and trade outlets, including the independent dealers, jobbers, wholesalers, oil company outlets, factory-owned stores, chain or mass distributors, and the mail order houses.

According to information received, the manufacturers number about 50 companies and the distributing units and trade outlets exceed 100,000. The total capital investment of the industry is said to approximate \$2,000,000,000 and the aggregate annual volume of business \$750,000,000.

THE RULES

GROUP I*

RULE 1.

(a) *Prohibited Discriminatory Differentials, Rebates, Refunds, Discounts, Credits, and Other Allowances.*—It is an unfair trade practice for any member of the industry engaged in commerce,¹ in the course of such commerce, to grant or allow, secretly or openly, directly

¹ See footnote, p. 460.

* See page VIII for headnote applicable to Group I Rules.

or indirectly, any price differentials, rebates, refunds, discounts, credits, or other allowances which effectuate a discrimination in price between different purchasers of goods of like grade and quality where either or any of the purchases involved therein are in commerce¹ and where the effect thereof may be substantially to lessen competition or tend to create a monopoly in any line of commerce¹ or to injure, destroy, or prevent competition with any person who either grants or knowingly receives the benefit of such discrimination or with customers of either of them: *Provided, however*—

(1) That the goods involved in any such transaction are sold for use, consumption, or resale within any place under the jurisdiction of the United States;

(2) That nothing herein contained shall prevent differentials which make only due allowance for differences in the cost of manufacture, sale, or delivery resulting from the differing methods or quantities in which such commodities are to such purchasers sold or delivered;

(3) That nothing herein contained shall prevent persons engaged in selling goods, wares, or merchandise in commerce¹ from selecting their own customers in bona fide transactions and not in restraint of trade;

(4) That nothing herein contained shall prevent price changes from time to time where made in response to changing conditions affecting either (a) the market for the goods concerned, or (b) the marketability of the goods, such as, but not limited to, actual or imminent deterioration of perishable goods, obsolescence of seasonal goods, distress sales under court process, or sales in good faith in discontinuance of business in the goods concerned.

(b) *Prohibited Brokerage and Commissions.*—It is an unfair trade practice for any member of the industry engaged in commerce¹, in the course of such commerce, to pay or grant, or to receive or accept, anything of value as a commission, brokerage, or other compensation, or any allowance or discount in lieu thereof, except for services rendered in connection with the sale or purchase of goods, wares, or merchandise, either to the other party to such transaction or to an agent, representative, or other intermediary therein where such intermediary is acting in fact for or in behalf, or is subject to the direct or indirect control, of any party to such transaction other than the person by whom such compensation is so granted or paid.

(c) *Prohibited Advertising or Promotional Allowances, Etc.*—It is an unfair trade practice for any member of the industry engaged in

¹ See footnote, p. 460.

commerce¹ to pay or contract for the payment of advertising or promotional allowances or any other thing of value to or for the benefit of a customer of such member in the course of such commerce as compensation or in consideration for any services or facilities furnished by or through such customer in connection with the processing, handling, sale, or offering for sale of any products or commodities manufactured, sold, or offered for sale by such member, unless such payment or consideration is available on proportionally equal terms to all other customers competing in the distribution of such products or commodities.

(d) *Prohibited Discriminatory Services or Facilities.*—It is an unfair trade practice for any member of the industry engaged in commerce¹ to discriminate in favor of one purchaser against another purchaser or purchasers of a commodity bought for resale, with or without processing, by contracting to furnish or by furnishing, or by contributing to the furnishing of, any services or facilities connected with the processing, handling, sale, or offering for sale of such commodity so purchased upon terms not accorded to all purchasers on proportionally equal terms.

(e) *Illegal Price Discrimination.*—It is an unfair trade practice for any member of the industry or other person engaged in commerce¹ in the course of such commerce to discriminate in price in any other respect contrary to Section 2 of the Clayton Act as amended by the Act of Congress approved June 19, 1936 (Public, No. 692, 74th Congress), or knowingly to induce or receive a discrimination in price which is prohibited by such section as amended.

RULE 2.

The defamation of competitors by falsely imputing to them dishonorable conduct, inability to perform contracts, questionable credit standing, or by other false representations, or the false disparagement of the grade, quality, or manufacture of the products of competitors, or of their business methods, selling prices, values, credit terms, policies, or services, with the tendency, capacity, or effect of misleading or deceiving purchasers, prospective purchasers, or the consuming public, is an unfair trade practice.

RULE 3.

The practice of selling goods below the seller's cost, with the intent and with the effect of injuring a competitor and where the effect may be to substantially lessen competition or tend to create a monopoly or unreasonably restrain trade, is an unfair trade practice; all elements recognized by good accounting practice as proper elements of such cost shall be included in determining cost under this rule.

¹ See footnote, p. 460.

RULE 4.

The making, or causing or permitting to be made or published, any false, untrue, or deceptive statement, representation, guarantee, warranty, or adjustment policy, by way of advertisement or otherwise, concerning the grade, quality, quantity, substance, use, character, nature, origin, size, manufacture, or distribution of any product of the industry or concerning the life or service of tires or tubes, or in any other material respect, having the tendency, capacity, or effect of misleading or deceiving purchasers, prospective purchasers, or the consuming public, is an unfair trade practice.

RULE 5.

The false or deceptive marking or branding of products of the industry for the purpose or with the tendency, capacity, or effect of misleading or deceiving purchasers, prospective purchasers, or the consuming public with respect to the grade, quality, quantity, use, size, material, content, origin, preparation, manufacture, or distribution of such products, or in any other material respect, is an unfair trade practice.

RULE 6.

For any person, firm, or corporation to hold himself or itself out to the public as "an authorized dealer" when such is not the fact, or for any member of the industry to misrepresent the character of his business, with the tendency, capacity, or effect of misleading or deceiving purchasers, prospective purchasers, or the consuming public is an unfair trade practice.

RULE 7.

For any member of the industry to represent, by advertising or otherwise, that he handles "all standard makes" of tires or tubes when such is not the fact, with the tendency, capacity, or effect of misleading or deceiving purchasers, prospective purchasers, or the consuming public, is an unfair trade practice.

RULE 8.

Falsely representing in the sale or offering for sale of "change over" tires or tubes that such tires or tubes are new or unused when they are in fact not new or unused, with the tendency, capacity, or effect of misleading or deceiving purchasers, prospective purchasers, or the consuming public, is an unfair trade practice.

RULE 9.

Withholding from or inserting in the invoice or sale ticket statements which make the invoice or sale ticket a false record, wholly or in part, of the transaction represented on the face thereof, with the purpose or effect of thereby misleading or deceiving purchasers,

prospective purchasers, or the consuming public, is an unfair trade practice.

RULE 10.

(a) The passing off, selling, or offering for sale of used, rebuilt, recapped, retreaded, or repaired tires as new or unused tires, is an unfair trade practice.

(b) The sale or offering for sale of used, rebuilt, recapped, retreaded, or repaired tires which have been dressed or prepared so as to simulate new or unused tires without having durably and conspicuously branded or molded in the rubber thereof the word "**SECONDHAND**," or the words "**USED TIRE—REBUILT**," "**USED TIRE—RECAPPED**," "**USED TIRE—RETREADED**," or "**USED TIRE—REPAIRED**," as the case may be, or without otherwise fully and truthfully disclosing to all purchasers and users the fact that such tires are not new but in truth are secondhand tires, or used tires which have been rebuilt, recapped, retreaded, or repaired, respectively, with the purpose or with the effect of misleading or deceiving purchasers, prospective purchasers, or the consuming public, or with the purpose or effect of placing an instrument of fraud or deception in the hands of dealers or in other channels of trade, is an unfair trade practice.

RULE 11.

The direct or indirect misrepresentation of tires as being of a quality or grade higher than in fact they are, or as being of first, second, third, fourth, or fifth line or grade when such is not the fact, having the tendency, capacity, or effect of misleading or deceiving purchasers, prospective purchasers, or the consuming public, is an unfair trade practice.

RULE 12.

The use in advertisements of illustrations or depictions of tires or tubes of a different brand, style, or size, or of a higher line, grade, or quality than the tires or tubes to which the representations in such advertisements are truthfully applicable, having the capacity, tendency, or effect of misleading or deceiving purchasers, prospective purchasers, or the consuming public, is an unfair trade practice.

RULE 13.

The use of advertisements or representations of tires or tubes, or of prices thereof, which are in fact applicable only to certain limited sizes, lines, grades, qualities, styles, or brands, without in such advertisements and representations truthfully and unequivocally disclosing the fact of such limitations, having the capacity, tendency, or effect of misleading or deceiving purchasers, prospective purchasers, or the consuming public, is an unfair trade practice.

GROUP II*

RULE A.

Where merchandise at wholesale and merchandise at retail are sold in the same establishment, the failure on the part of any member of the industry to correctly differentiate between or identify the two types of transactions, where the result may be to create confusion and deception as to the character of the transaction in the mind of purchasers or prospective purchasers, is condemned by the industry.

RULE B.

In the interest of public safety and the protection of purchasers and prospective purchasers from deception, it is the judgment of the industry that the members thereof manufacturing pneumatic automobile tires should mark or brand such tires with words and figures or phrases, molded on or in the rubber of each side wall of such tires (or otherwise affixed on each such side in some equally permanent manner) which will unequivocally, conspicuously, and truthfully indicate the number of plies existing in the construction of such tires (ply as herein used meaning fabric running from bead to bead of tire), for example: "**4-PLY**," or "**6-PLY**," etc.

The failure or refusal to so mark or brand tires as provided in this rule is condemned by the industry.

Promulgated by the Federal Trade Commission October 17, 1936.

* See page VIII for headnote applicable to Group II Rules.

TRADE PRACTICE RULES

FOR

PRIVATE HOME STUDY SCHOOLS

PROMULGATED NOVEMBER 2, 1936

STATEMENT BY THE COMMISSION

Trade practice rules for the Private Home Study School Industry, as herein set forth, were today promulgated by the Federal Trade Commission under its trade practice conference procedure.

A general conference, under the auspices of the Commission, was held at the LaSalle Hotel, Chicago, Illinois, June 24, 1936. According to information received, approximately 90 percent of the industry, based on the volume of business, was represented at this conference. The number of schools in the Private Home Study School Industry is approximately 400, located in widely separated sections of the country, and the number of students enrolled is estimated at about 600,000. At such conference proposed rules were adopted and submitted by the industry to the Commission for its approval.

The proposed rules, with certain modifications, were then tentatively acted upon by the Commission and released for a 15-day period upon public notice whereby opportunity was afforded all interested or affected parties to present to the Commission their views regarding the same, including suggestions or objections, if any. Thereafter, in the course of the proceedings, one amendment to the rules was adopted, whereupon the rules as amended and herein set forth were approved by the Commission as to Group I; and as to Group II were received by the Commission as expressions of the industry. The rules this day promulgated by the Commission for this industry supersede the rules previously promulgated under date of July 21, 1927.

THE RULES

GROUP I*

RULE 1.

The making, or causing or permitting to be made or published, any false, untrue, or deceptive statement or representation, by way of advertising or otherwise, concerning home study schools, their activities in attempting to enroll students, or concerning the character, nature, quality, value, or scope of any course of instruction or educational service offered, or in any other material respect, with the tendency

* See page VIII for headnote applicable to Group I Rules.

or capacity to mislead or deceive students, prospective students, or the public, is an unfair trade practice.

RULE 2.

The making of false, untrue, or deceptive statements or representations regarding actual or probable earnings or opportunities in any vocation, with the tendency or capacity to mislead or deceive students, prospective students, or the public, is an unfair trade practice.

RULE 3.

The making of false, untrue, or deceptive statements or representations regarding the opportunities in any vocation or field of activity as a result of the completion of any given course of instruction or educational service, with the tendency or capacity to mislead or deceive students, prospective students, or the public, is an unfair trade practice.

RULE 4.

The making of false, untrue, or deceptive statements or representations as to services to be rendered in connection with the securing or attempting to secure employment for students, or as to the influence or connection of any school or schools with any branch, department, or establishment of the United States Government, with the tendency or capacity to mislead or deceive students, prospective students, or the public, is an unfair trade practice.

RULE 5.

The making of false, untrue, or deceptive promises or representations regarding a job or a raise in pay upon completing a certain course of instruction or portion thereof, with the tendency or capacity to mislead or deceive students, prospective students, or the public, is an unfair trade practice.

RULE 6.

Representing an offer to be limited as to time or otherwise when such is not the fact, with the tendency or capacity to mislead or deceive students, prospective students, or the public, is an unfair trade practice.

RULE 7.

Representing an offer as "special" when it is in fact a "regular" offer, with the tendency or capacity to mislead or deceive students, prospective students, or the public, is an unfair trade practice.

RULE 8.

Offering courses of instruction at prices purported to be reduced from what are in fact marked-up or fictitious prices, with the tendency

or capacity to mislead or deceive students, prospective students, or the public, is an unfair trade practice.

RULE 9.

It is an unfair trade practice for any member of the industry to use, directly or indirectly, any so-called "money-back" guarantee, refund agreement, or other similar guarantee, agreement, or contract between school and student, which (a) is conditioned upon the student taking or passing, or having the opportunity to take or pass, a future Government or Civil Service examination or test, or any other form of future examination or test given by any organization not affiliated with the school; or (b) is conditioned upon the student being placed upon a Government or other eligible list; or (c) is conditioned upon the student securing or having the opportunity to secure employment within the field of training pursued; or (d) is conditioned upon any other contingency; and which has the capacity, tendency, or effect of misleading or deceiving students or prospective students because of the text of such guarantee, agreement, or contract, or because of the representations regarding the same, or because of the circumstances or other conditions of its use, or which otherwise involves deception, misrepresentation, bad faith, or the deceptive concealment of pertinent facts.

RULE 10.

Making offers of scholarships or partial scholarships in such manner as to mislead or deceive students or prospective students into the belief that such offers are bona fide, when they are in fact not bona fide, is an unfair trade practice.

RULE 11.

Representing any commodity or service as "free" when in fact such commodity or service is regularly included as part of the course of instruction or service, with the tendency or capacity to mislead or deceive students, prospective students, or the public, is an unfair trade practice.

RULE 12.

The defamation of competitors by falsely imputing to them dishonorable conduct, inability to perform contracts, questionable credit standing, or by other false representations, or the false disparagement of the character, nature, quality, value, or scope of their courses of instruction or educational services, or in any other material respect, with the tendency or capacity to mislead or deceive students, prospective students, or the public, is an unfair trade practice.

RULE 13.

The use of any name, title, or other designation, by way of adver-

tising or otherwise, having the tendency or capacity to mislead or deceive students, prospective students, or the public as to the character of the institution, its courses of instruction, or its influence in obtaining employment for students, is an unfair trade practice.

RULE 14.

For any member of the industry to issue any certificate or diploma, or to confer any degree, which misrepresents the course of study or instruction covered or completed, or the accomplishments or standing of the student receiving such certificate, diploma, or degree, with the tendency or capacity to mislead or deceive students, prospective students, or the public, is an unfair trade practice.

RULE 15.

Falsely representing the character or scope of any course of instruction or service offered, with the tendency or capacity to mislead or deceive students, prospective students, or the public, is an unfair trade practice.

RULE 16.

The making of false, untrue, or deceptive statements or representations, through advertising or otherwise, that a certain individual or individuals are bona fide members of the faculty of a school or are members of its advisory board or authors of its instruction material, or the making of misleading statements or representations as to the value of any former connection with the United States Government as an aid to securing employment, with the tendency or capacity to mislead or deceive students, prospective students, or the public, is an unfair trade practice.

RULE 17.

The false representation, through advertising or otherwise, that students are given personal instruction by the head of the institution or a department head thereof, with the tendency or capacity to mislead or deceive students, prospective students, or the public, is an unfair trade practice.

RULE 18.

The use of "Help Wanted" or other employment columns in newspapers or other publications to get in touch with prospective students in such manner as to mislead or deceive such prospective students into the belief that a job is offered is an unfair trade practice.

RULE 19.

The use of "blind" advertisements or sales literature to attract prospective students when such advertisements or literature fail to set forth that courses of instruction or other educational services are

being offered, in such manner as to mislead or deceive students, prospective students, or the public, is an unfair trade practice.

RULE 20.

The use of misleading or deceptive language in any form, with the tendency or capacity to mislead or deceive students, prospective students, or the public, is an unfair trade practice.

RULE 21.

The use of the word "guarantee" or other word or words of similar import in connection with "money-back" agreements, in such manner as to mislead or deceive students, prospective students, or the public, is an unfair trade practice.

RULE 22.

In the collection of tuition fees, the use of papers simulating or counterfeiting court documents in such manner as to mislead or deceive students is an unfair trade practice.

RULE 23.

The use of a photograph, cut, engraving, or illustration in catalogues, sales literature, or otherwise, in such manner as to convey a false impression as to the size, importance, or location of the offices occupied by a private home study school, or as to such school's equipment, with the tendency or capacity to mislead or deceive students, prospective students, or the public, is an unfair trade practice.

RULE 24.

The use of pictures or illustrations of Uncle Sam, the National Capitol, or any pictures, illustrations, or devices of similar character, or the use of the name or title of any present or former government official, activity, branch, department, or establishment of the government, in such manner as to mislead or deceive students, prospective students, or the public into the erroneous belief that the institution or its instructors have official relationship or connection with the United States Government, or into the erroneous belief that the training or service offered has the approval or endorsement of the United States Government or any branch thereof, is an unfair trade practice.

RULE 25.

Falsely representing, directly or indirectly, through advertising or otherwise, that a school is operated "not for profit," with the tendency or capacity to mislead or deceive students, prospective students, or the public, is an unfair trade practice.

RULE 26.

Wilfully inducing the enrollment or retention of a student for any course of instruction or training for a job or position for which the

student is manifestly unfit by reason of educational or permanent physical disqualification, or other material disqualification, is an unfair trade practice.

GROUP II*

RULE A.

"Money-back" agreements, so called, or other similar contracts between school and student, should state plainly the conditions under which tuition or other moneys will be refunded, and such agreements or contracts should contain no conditions intended to deceive, hamper, or harass the student and prevent a refund to him of tuition to which he may be entitled under the terms of the contract.

RULE B.

It is the judgment of the industry that the sales representatives of all schools be selected primarily on a basis of ability and integrity, and that each representative be given an adequate preliminary training and be bonded by an approved bonding company or by adequate personal sureties conditioned upon the faithful performance of his financial duties before being authorized to secure student enrollment.

RULE C.

It is the judgment of the industry that all schools should, at or prior to the time of enrollment for any course of study or service, provide each student enrolled therein with literature, by means of catalogue, correspondence, or other writing, clearly setting forth the nature, scope, number, and character of lesson assignments and the terms upon which such course of study or service is sold.

RULE D.

It is the judgment of the industry that the members thereof should exercise careful supervision over their sales representatives so as to guard against any misrepresentations by such representatives regarding advantages or opportunities or other matters pertinent to enrolling students or prospective students, whether or not the same be set forth in the contract between school and student.

A Committee on Trade Practices, comprising five members, is hereby created by the industry to cooperate with the Federal Trade Commission and to perform such acts as may be legal and proper to put these rules into effect.

Promulgated by the Federal Trade Commission November 2, 1936.

* See page VIII for headnote applicable to Group II Rules.

TRADE PRACTICE RULES

FOR THE

SCHOOL SUPPLIES AND EQUIPMENT DISTRIBUTING
INDUSTRY

PROMULGATED NOVEMBER 12, 1936

STATEMENT BY THE COMMISSION

Trade practice rules for the School Supplies and Equipment Distributing Industry, as herein set forth, were today promulgated by the Federal Trade Commission under its trade practice conference procedure.

The application to amend or supplement the trade practice rules previously promulgated by the Commission for this industry was presented by the National School Supplies and Equipment Association. In the course of the proceedings, the proposed new rules for the industry were released by the Commission for a 15-day period upon public notice whereby opportunity was afforded all interested or affected parties to present to the Commission their views regarding the same, including suggestions or objections, if any. A public hearing to permit the offering of any such suggestions or objections was held.

Due consideration having been given this matter by the Commission, the rules for this industry, as amended and set forth herein, were approved by the Commission as to Group I; and as to Group II were received by the Commission as expressions of the industry.

The rules this day promulgated by the Commission for this industry supersede those previously promulgated on August 15, 1932.

THE RULES

GROUP I*

RULE 1.

Wilfully inducing or attempting to induce, by any false or deceptive means whatsoever, the breach of any lawful contract or contracts existing between competitors and their customers or their suppliers, or wilfully interfering with or obstructing the performance of any such contractual duties or services, with the purpose and effect of unduly hampering, injuring, or embarrassing competitors in their businesses, is an unfair trade practice.

RULE 2.

Defamation of competitors by falsely imputing to them dishonorable

* See page VIII for headnote applicable to Group I Rules.

conduct, inability to perform contracts, questionable credit standing, or by other false representations, or the false disparagement of the grade, quality, or manufacture of the products of competitors, or of their business methods, selling prices, values, credit terms, policies, or services, with the tendency, capacity, or effect of misleading or deceiving purchasers, prospective purchasers, or the consuming public, is an unfair trade practice.

RULE 3.

The making, or causing or permitting to be made or published, any false, untrue, or deceptive statement or representation, by way of advertisement or otherwise, concerning the grade, quality, quantity, substance, character, nature, origin, size, or preparation of any product of the industry, or in any other material respect, with the tendency, capacity, or effect of misleading or deceiving purchasers, prospective purchasers, or the consuming public, is an unfair trade practice.

RULE 4.

Wilfully enticing away the employees of competitors, with the purpose and effect of unduly hampering, injuring, or embarrassing competitors in their businesses, is an unfair trade practice.

RULE 5.

(a) *Prohibited Discriminatory Differentials, Rebates, Refunds, Discounts, Credits, and Other Allowances.*—It is an unfair trade practice for any member of the industry engaged in commerce,¹ in the course of such commerce, to grant or allow, secretly or openly, directly or indirectly, any price differentials, rebates, refunds, discounts, credits, or other allowances which effectuate a discrimination in price between different purchasers of goods of like grade and quality where either or any of the purchases involved therein are in commerce¹ and where the effect thereof may be substantially to lessen competition or tend to create a monopoly in any line of commerce¹ or to injure, destroy, or prevent competition with any person who either grants or knowingly receives the benefit of such discrimination or with customers of either of them: *Provided, however*—

(1) That the goods involved in any such transaction are sold for use, consumption, or resale within any place under the jurisdiction of the United States;

(2) That nothing herein contained shall prevent differentials which make only due allowance for differences in the cost of manufacture, sale, or delivery resulting from the differing methods or quantities in which such commodities are to such purchasers sold or delivered;

(3) That nothing herein contained shall prevent persons en-

¹ See footnote, p. 460.

gaged in selling goods, wares, or merchandise in commerce¹ from selecting their own customers in bona fide transactions and not in restraint of trade;

(4) That nothing herein contained shall prevent price changes from time to time where made in response to changing conditions affecting either (a) the market for the goods concerned, or (b) the marketability of the goods, such as, but not limited to, actual or imminent deterioration of perishable goods, obsolescence of seasonal goods, distress sales under court process, or sales in good faith in discontinuance of business in the goods concerned.

(b) *Prohibited Brokerage and Commissions.*—It is an unfair trade practice for any member of the industry engaged in commerce,¹ in the course of such commerce, to pay or grant, or to receive or accept, anything of value as a commission, brokerage, or other compensation, or any allowance or discount in lieu thereof, except for services rendered in connection with the sale or purchase of goods, wares, or merchandise, either to the other party to such transaction or to an agent, representative, or other intermediary therein where such intermediary is acting in fact for or in behalf, or is subject to the direct or indirect control, of any party to such transaction other than the person by whom such compensation is so granted or paid.

(c) *Prohibited Advertising or Promotional Allowances, Etc.*—It is an unfair trade practice for any member of the industry engaged in commerce¹ to pay or contract for the payment of advertising or promotional allowances or any other thing of value to or for the benefit of a customer of such member in the course of such commerce as compensation or in consideration for any services or facilities furnished by or through such customer in connection with the processing, handling, sale, or offering for sale of any products or commodities manufactured, sold, or offered for sale by such member, unless such payment or consideration is available on proportionally equal terms to all other customers competing in the distribution of such products or commodities.

(d) *Prohibited Discriminatory Services or Facilities.*—It is an unfair trade practice for any member of the industry engaged in commerce¹ to discriminate in favor of one purchaser against another purchaser or purchasers of a commodity bought for resale, with or without processing, by contracting to furnish or by furnishing, or by contributing to the furnishing of, any services or facilities connected with the processing, handling, sale, or offering for sale of such commodity so purchased upon terms not accorded to all purchasers on proportionally equal terms.

(e) *Illegal Price Discrimination.*—It is an unfair trade practice

¹ See footnote, p. 460.

for any member of the industry or other person engaged in commerce¹ in the course of such commerce to discriminate in price in any other respect contrary to Section 2 of the Clayton Act as amended by the Act of Congress approved June 19, 1936 (Public, No. 692, 74th Congress), or knowingly to induce or receive a discrimination in price which is prohibited by such section as amended.

RULE 6.

The practice of selling industry products below the seller's cost, with the intent and with the effect of injuring a competitor and where the effect may be substantially to lessen competition or tend to create a monopoly or unreasonably restrain trade, is an unfair trade practice; all elements recognized by good accounting practice as proper elements of such cost shall be included in determining cost under this rule.

RULE 7.

Directly or indirectly to give, or permit to be given, or offer to give, money or anything of value to agents, employees, or representatives of customers or prospective customers, or to agents, employees, or representatives of competitors' customers or prospective customers, without the knowledge of their employers or principals, as an inducement to influence their employers or principals to purchase or contract to purchase industry products from the maker of such gift or offer or to influence such employers or principals to refrain from dealing or contracting to deal with competitors, is an unfair trade practice.

RULE 8.

The circulation of threats of suit for infringement of patents or trade-marks among customers or prospective customers of a competitor, not made in good faith but for the purpose of harassing or intimidating such customers or prospective customers or otherwise prejudicing or injuring competitors in their businesses, is an unfair trade practice.

RULE 9.

The practice of coercing the purchase of one or more products as a prerequisite to the purchase of one or more other products, where the effect may be to substantially lessen competition or tend to create a monopoly or to unreasonably restrain trade, is an unfair trade practice.

RULE 10.

Offering for sale merchandise at prices purported to be reduced from what are in fact marked-up or fictitious prices, with the tendency or capacity to mislead or deceive purchasers, prospective purchasers, or the consuming public, is an unfair trade practice.

¹ See footnote, p. 460.

RULE 11.

The use of the word "free" where not properly or fairly qualified when the article is in fact not free, with the tendency or capacity to mislead or deceive purchasers, prospective purchasers, or the consuming public, is an unfair trade practice.

RULE 12.

The selling or offering for sale of merchandise packed in odd-sized or odd-shaped containers or packages, simulating in size or shape standard size or shaped containers or packages, designed to hold and known to the purchasing public as standard containers or packages, with the tendency, capacity, or effect of misleading or deceiving purchasers, prospective purchasers, or the consuming public as to the contents of such containers or packages and with the tendency to injuriously affect the business of competitors, is an unfair trade practice.

RULE 13.

The practice of shipping or delivering products which do not conform to the samples submitted or representations made prior to securing the orders, without the consent of the purchasers to such substitutions and having the tendency, capacity, or effect of deceiving or misleading purchasers, prospective purchasers, or the consuming public, is an unfair trade practice.

RULE 14.

For any person, firm, or corporation to give anything of value to those employed in any capacity involving special trust (such as instructor, purchaser, agent, supervisor, or school official), without the knowledge of their employers, upon the condition or understanding, express or implied, that its goods be recommended or used by such person in preference to the goods or equipment of a competitor or competitors of that person, firm, or corporation, with the tendency to injuriously affect the business of competitors, is an unfair trade practice: *Provided*, That nothing in this resolution shall prevent any person, firm, or corporation from selling its goods to anyone upon whatever terms it sees fit, but without any condition or understanding, express or implied, as to the recommendation or use of said goods or equipment.

RULE 15.

The imitation of the trade-marks, trade names, brands, labels, or other marks of identification of competitors, having the tendency, capacity, or effect of misleading or deceiving purchasers, prospective purchasers, or the consuming public, is an unfair trade practice.

RULE 16.

Securing information from competitors concerning their businesses

by false or misleading statements or representations or by false impersonations of one in authority and the wrongful use thereof to unduly hinder or stifle the competition of such competitors is an unfair trade practice.

RULE 17.

In connection with the sale or offering for sale of products of the industry, representing through advertising or otherwise that such products conform to any standards recognized in or applicable to the industry when such is not the fact, with the tendency, capacity, or effect of misleading or deceiving purchasers, prospective purchasers, or the consuming public, is an unfair trade practice.

RULE 18.

It is an unfair trade practice for any member of the industry to use the practice of shipping goods on consignment for the purpose and with the effect of artificially clogging trade outlets and unduly restricting competitors' use of said trade outlets in getting their goods to consumers through regular channels of distribution, or with such purpose to entirely close said trade outlets to such competitors so as to substantially lessen competition or tend to create a monopoly or to unreasonably restrain trade: *Provided, however*, That nothing herein shall be construed or used as restricting or preventing consignment shipping or marketing of commodities in good faith and without artificial interference with competitors' use of the usual channels of distribution in such manner as thereby to suppress competition or restrain trade.

RULE 19.

Withholding from or inserting in the invoice statements which make the invoice a false record, wholly or in part, of the transaction represented on the face thereof, with the purpose or effect of misleading or deceiving purchasers, prospective purchasers, or the consuming public, is an unfair trade practice.

RULE 20.

The practice of using any product of the industry as a "loss leader" to induce the purchase of other merchandise, the sale of which merchandise is used to recoup the loss sustained on the "loss leader" product so sold, with the tendency or capacity of misleading or deceiving purchasers, prospective purchasers, or the consuming public, and which unfairly diverts trade from or otherwise injures competitors, is an unfair trade practice.

RULE 21.

For any person, firm, or corporation to hold himself or itself out to the public as a wholesaler when such is not the fact, or in any other

manner to misrepresent the character, extent, or type of his business, with the tendency or capacity to mislead or deceive purchasers, prospective purchasers, or the consuming public, is an unfair trade practice.

GROUP II*

RULE A.

The industry records its approval of distributing to its members information covering delinquent and slow accounts insofar as this may be lawfully done.

RULE B.

(a) The industry approves the practice of each individual member of the industry independently publishing and circulating to the purchasing trade his own price lists.

(b) The industry approves the practice of making the terms of sale a part of all published price schedules.

RULE C.

It is the judgment of the industry that each member should independently keep proper and accurate records for determining his own costs.

RULE D.

The industry approves the practice of handling business disputes between members of the industry and their customers in a fair and reasonable manner, coupled with a spirit of moderation and good will, and every effort should be made by the disputants themselves to compose their differences. If unable to do so they should, if possible, submit these disputes to arbitration.

RULE E.

All members of this industry shall protect the consumer not only as far as is required by law, but as required by good morals and the best ethics of business.

RULE F.

The industry condemns fake or fictitious bids made for the purpose of deceiving competitors and securing undue advantage. If plans and specifications are changed and new bids called for after the original bids have been submitted and opened, the same fairness should obtain as with the original bid.

RULE G.

In cases of competitive bidding, the practice of receiving or making so-called "blind bids," which discount the lowest competitive bid

* See page VIII for headnote applicable to Group II Rules.

regardless of the amount, tends to destroy competitive bidding, and is condemned by the industry.

A Committee on Trade Practices of five members is hereby created by the industry to cooperate with the Federal Trade Commission and to perform such acts as may be legal and proper to put these rules into effect.

Promulgated by the Federal Trade Commission November 12, 1936.

659742-46-5

**TRADE PRACTICE RULES
FOR THE
COVERED BUTTON AND BUCKLE MANUFACTURING
INDUSTRY**

PROMULGATED APRIL 9, 1937

STATEMENT BY THE COMMISSION

Trade practice rules for the Covered Button and Buckle Manufacturing Industry, as herein set forth, have been promulgated by the Federal Trade Commission under its trade practice conference procedure.

The members of this industry are manufacturers of covered buttons and buckles, which are of many types and varieties and are used on shoes, pocketbooks, neckwear, pajamas, upholstery, caps, gowns, tuxedos, ladies' hats, bathrobes, lingerie, negligees, nightgowns, ladies' and infants' dress and wearing apparel, and similar articles. Their annual volume of sales of such products is estimated to be between \$3,500,000 and \$5,000,000. In a peak year, frequently referred to as a "style year," the volume of sales rises to about \$7,000,000.

The application for approval of trade practice rules for this industry was made by Covered Button and Buckle Creators, Incorporated, New York City, an organization said to represent over 90 percent of the industry in point of volume of production and capital invested.

In the course of the proceedings the proposed rules were made available to the public with opportunity to all interested or affected parties to be heard and to submit their views, suggestions, or objections, if any.

Due consideration having been given this matter by the Commission, the rules for this industry were approved and promulgated by the Commission in the form appearing herein.

**THE RULES
GROUP I***

RULE 1.

The practice of selling goods below the sellers' cost, with the intent and with the effect of injuring a competitor and where the effect may be to substantially lessen competition or tend to create a monopoly or to unreasonably restrain trade, is an unfair trade practice; all elements recognized by good accounting practice as proper elements of such cost shall be included in determining cost under this rule.

* See page VIII for headnote applicable to Group I Rules.

RULE 2.

Wilfully enticing away the employees of competitors, with the purpose and effect of unduly hampering, injuring, or embarrassing competitors in their businesses, is an unfair trade practice.

RULE 3.

The defamation of competitors by falsely imputing to them dishonorable conduct, inability to perform contracts, questionable credit standing, or by other false representations, or the false disparagement of the grade, quality, or manufacture of the products of competitors, or of their business methods, selling prices, values, credit terms, policies, or services, with the tendency, capacity, or effect of misleading or deceiving purchasers, prospective purchasers, or the consuming public, is an unfair trade practice.

RULE 4.

The imitation of the trade-marks, trade names, brands, labels, or other marks of identification of competitors, having the tendency, capacity, or effect of misleading or deceiving purchasers, prospective purchasers, or the consuming public, is an unfair trade practice.

RULE 5.

(a) *Prohibited Discriminatory Differentials, Rebates, Refunds, Discounts, Credits, and Other Allowances.*—It is an unfair trade practice for any member of the industry engaged in commerce,¹ in the course of such commerce, to grant or allow, secretly or openly, directly or indirectly, any price differentials, rebates, refunds, discounts, credits, or other allowances which effectuate a discrimination in price between different purchasers of goods of like grade and quality where either or any of the purchases involved therein are in commerce¹ and where the effect thereof may be substantially to lessen competition or tend to create a monopoly in any line of commerce¹ or to injure, destroy, or prevent competition with any person who either grants or knowingly receives the benefit of such discrimination or with customers of either of them: *Provided, however—*

(1) That the goods involved in any such transaction are sold for use, consumption, or resale within any place under the jurisdiction of the United States;

(2) That nothing herein contained shall prevent differentials which make only due allowance for differences in the cost of manufacture, sale, or delivery resulting from the differing methods or quantities in which such commodities are to such purchasers sold or delivered.

¹ See footnote, p. 460.

(3) That nothing herein contained shall prevent persons engaged in selling goods, wares, or merchandise in commerce¹ from selecting their own customers in bona fide transactions and not in restraint of trade;

(4) That nothing herein contained shall prevent price changes from time to time where made in response to changing conditions affecting either (a) the market for the goods concerned, or (b) the marketability of the goods, such as, but not limited to, actual or imminent deterioration of perishable goods, obsolescence of seasonal goods, distress sales under court process, or sales in good faith in discontinuance of business in the goods concerned.

(b) *Prohibited Brokerage and Commissions.*—It is an unfair trade practice for any member of the industry engaged in commerce,¹ in the course of such commerce, to pay or grant, or to receive or accept, anything of value as a commission, brokerage, or other compensation, or any allowance or discount in lieu thereof, except for services rendered in connection with the sale or purchase of goods, wares, or merchandise, either to the other party to such transaction or to an agent, representative, or other intermediary therein where such intermediary is acting in fact for or in behalf, or is subject to the direct or indirect control, of any party to such transaction other than the person by whom such compensation is so granted or paid.

(c) *Prohibited Advertising or Promotional Allowances, Etc.*—It is an unfair trade practice for any member of the industry engaged in commerce¹ to pay or contract for the payment of advertising or promotional allowances or any other thing of value to or for the benefit of a customer of such member in the course of such commerce as compensation or in consideration for any services or facilities furnished by or through such customer in connection with the processing, handling, sale, or offering for sale of any products or commodities manufactured, sold, or offered for sale by such member, unless such payment or consideration is available on proportionally equal terms to all other customers competing in the distribution of such products or commodities.

(d) *Prohibited Discriminatory Services or Facilities.*—It is an unfair trade practice for any member of the industry engaged in commerce¹ to discriminate in favor of one purchaser against another purchaser or purchasers of a commodity bought for resale, with or without processing, by contracting to furnish or by furnishing, or by contributing to the furnishing of, any services or facilities connected with the processing, handling, sale, or offering for sale of such commodity so purchased upon terms not accorded to all purchasers on proportionally equal terms.

¹ See footnote, p. 460.

(e) *Illegal Price Discrimination.*—It is an unfair trade practice for any member of the industry or other person engaged in commerce,¹ in the course of such commerce, to discriminate in price in any other respect contrary to Section 2 of the Clayton Act as amended by the Act of Congress approved June 19, 1936 (Public, No. 692, 74th Congress), or knowingly to induce or receive a discrimination in price which is prohibited by such section as amended.

RULE 6.

Wilfully inducing, or attempting to induce, by any false or deceptive means whatsoever, the breach of any lawful contract or contracts existing between competitors and their customers or their suppliers, or wilfully interfering with or obstructing the performance of any such contractual duties or services, with the purpose and effect of unduly hampering, injuring, or embarrassing competitors in their businesses, is an unfair trade practice.

RULE 7.

The making, or causing or permitting to be made or published, any false, untrue, or deceptive statement or representation, by way of advertisement or otherwise, concerning the grade, quality, quantity, substance, character, nature, origin, size, or preparation of any product of the industry, or in any other material respect, with the tendency, capacity, or effect of misleading or deceiving purchasers, prospective purchasers, or the consuming public, is an unfair trade practice.

RULE 8.

The practice of coercing the purchase of one or more products as a prerequisite to the purchase of one or more other products, where the effect may be to substantially lessen competition or tend to create a monopoly or to unreasonably restrain trade, is an unfair trade practice.

RULE 9.

Offering merchandise for sale at prices purported to be reduced from what are in fact fictitious prices, or offering merchandise for sale at a purported reduction in price when such purported reduction is in fact fictitious, with the tendency and capacity or effect of misleading or deceiving purchasers, prospective purchasers, or the consuming public, is an unfair trade practice.

RULE 10.

The use of the word "free" where not properly or fairly qualified when the article is in fact not free, with the tendency or capacity to mislead or deceive purchasers, prospective purchasers, or the consuming public, is an unfair trade practice.

¹ See footnote, p. 460.

RULE 11.

The practice of shipping or delivering products which do not conform to the samples submitted or representations made prior to securing the orders, without the consent of the purchasers to such substitutions and having the tendency, capacity, or effect of deceiving or misleading purchasers, prospective purchasers, or the consuming public, is an unfair trade practice.

RULE 12.

Directly or indirectly to give, or permit to be given, or offer to give, money or anything of value to agents, employees, or representatives of customers or prospective customers, or to agents, employees, or representatives of competitors' customers or prospective customers, without the knowledge of their employers or principals, as an inducement to influence their employers or principals to purchase or contract to purchase industry products from the maker of such gift or offer or to influence such employers or principals to refrain from dealing or contracting to deal with competitors, is an unfair trade practice.

RULE 13.

Securing information from competitors concerning their businesses by false or misleading statements or representations or by false impersonation of one in authority and the wrongful use thereof to unduly hinder or stifle the competition of such competitors is an unfair trade practice.

RULE 14.

In connection with the sale or offering for sale of products of the industry, representing through advertising or otherwise that such products conform to any standards recognized in or applicable to the industry when such is not the fact, with the tendency, capacity, or effect of misleading or deceiving purchasers, prospective purchasers, or the consuming public, is an unfair trade practice.

RULE 15.

For any person, firm, or corporation to hold himself or itself out to the public as a manufacturer or wholesaler when such is not the fact, or in any other manner to misrepresent the character, extent, or type of his or its business, with the tendency or capacity to mislead or deceive purchasers, prospective purchasers, or the consuming public, is an unfair trade practice.

RULE 16.

The false or deceptive marking or branding of products of the industry for the purpose or with the tendency, capacity, or effect of misleading or deceiving purchasers, prospective purchasers, or the consuming public with respect to the grade, quality, quantity, use,

size, material, content, origin, preparation, manufacture, or distribution of such products, or in any other material respect, is an unfair trade practice.

RULE 17.

Withholding from or inserting in invoices or sales tickets any statements or information by reason of which omission or insertion a false record is made, wholly or in part, of the transactions represented on the face of such invoices or sales tickets, with the purpose or effect of thereby misleading or deceiving purchasers, prospective purchasers, or the consuming public, is an unfair trade practice.

Promulgated by the Federal Trade Commission April 9, 1937.

TRADE PRACTICE RULES

FOR THE

TUBULAR PIPINGS AND TRIMMINGS MANUFACTURING
INDUSTRY

PROMULGATED APRIL 23, 1937

STATEMENT BY THE COMMISSION

Trade practice rules for the Tubular Pplings and Trimmings Manufacturing Industry, as herein set forth, have been promulgated by the Federal Trade Commission under its trade practice conference procedure.

The business of this industry is that of manufacturing and selling, throughout the United States, a class of textile products known as tubular pipings and trimmings. The members of the industry embrace all the manufacturers thereof. Such pipings and trimmings are made of yarns or fabrics composed of silk, synthetic fibers, cotton, wool, flax, or mixtures. In the course of their manufacture, the material is usually shaped in tubular form and made into ornaments or trimmings for decorating or trimming ladies' garments, infants' wear, and other textiles. The value of annual sales by members of the industry is estimated to total about \$4,000,000.

Such tubular pipings and trimmings do not include buckles, jeweled ornaments, covered buttons, or embroidery.

In the course of the proceedings the proposed rules for the industry were made available upon public notice, affording opportunity to all interested or affected parties to be heard and to present their views, suggestions, or objections, if any.

After consideration of the entire matter and the incorporation of certain amendments, the rules for this industry were approved and promulgated by the Commission in the form appearing herein.

THE RULES

GROUP I*

RULE 1.

The practice of selling goods below the seller's cost, with the intent and with the effect of injuring a competitor and where the effect may be to substantially lessen competition or tend to create a monopoly or unreasonably restrain trade, is an unfair trade practice; all elements recognized by good accounting practice as proper elements of such cost shall be included in determining cost under this rule.

* See page VIII for headnote applicable to Group I Rules.

RULE 2.

Wilfully inducing or attempting to induce, by any false or deceptive means whatsoever, the breach of any lawful contract or contracts existing between competitors and their customers or their suppliers, or wilfully interfering with or obstructing the performance of any such contractual duties or services, with the purpose and effect of unduly hampering, injuring, or embarrassing competitors in their businesses, is an unfair trade practice.

RULE 3.

The imitation of the trade-marks, trade names, brands, labels, or other marks of identification of competitors, having the tendency, capacity, or effect of misleading or deceiving purchasers, prospective purchasers, or the consuming public, is an unfair trade practice.

RULE 4.

The circulation of threats of suit for infringement of patents or trade-marks among customers or prospective customers of competitors, not made in good faith but for the purpose or with the effect of harassing or intimidating such customers or prospective customers or of unduly hampering, injuring, or prejudicing competitors in their businesses, is an unfair trade practice.

RULE 5.

(a) *Prohibited Discriminatory Differentials, Rebates, Refunds, Discounts, Credits, and Other Allowances.*—It is an unfair trade practice for any member of the industry engaged in commerce,¹ in the course of such commerce, to grant or allow, secretly or openly, directly or indirectly, any price differentials, rebates, refunds, discounts, credits, or other allowances which effectuate a discrimination in price between different purchasers of goods of like grade and quality where either or any of the purchases involved therein are in commerce¹ and where the effect thereof may be substantially to lessen competition or tend to create a monopoly in any line of commerce¹ or to injure, destroy, or prevent competition with any person who either grants or knowingly receives the benefit of such discrimination or with customers of either of them: *Provided, however—*

(1) That the goods involved in any such transaction are sold for use, consumption, or resale within any place under the jurisdiction of the United States;

(2) That nothing herein contained shall prevent differentials which make only due allowance for differences in the cost of manufacture, sale, or delivery resulting from the differing methods or quantities in which such commodities are to such purchasers sold or delivered;

¹ See footnote, p. 460.

(3) That nothing herein contained shall prevent persons engaged in selling goods, wares, or merchandise in commerce¹ from selecting their own customers in bona fide transactions and not in restraint of trade;

(4) That nothing herein contained shall prevent price changes from time to time where made in response to changing conditions affecting either (a) the market for the goods concerned, or (b) the marketability of the goods, such as, but not limited to, actual or imminent deterioration of perishable goods, obsolescence of seasonal goods, distress sales under court process, or sales in good faith in discontinuance of business in the goods concerned.

(b) *Prohibited Brokerage and Commissions.*—It is an unfair trade practice for any member of the industry engaged in commerce,¹ in the course of such commerce, to pay or grant, or to receive or accept, anything of value as a commission, brokerage, or other compensation, or any allowance or discount in lieu thereof, except for services rendered in connection with the sale or purchase of goods, wares, or merchandise, either to the other party to such transaction or to an agent, representative, or other intermediary therein where such intermediary is acting in fact for or in behalf, or is subject to the direct or indirect control, of any party to such transaction other than the person by whom such compensation is so granted or paid.

(c) *Prohibited Advertising or Promotional Allowances, Etc.*—It is an unfair trade practice for any member of the industry engaged in commerce¹ to pay or contract for the payment of advertising or promotional allowances or any other thing of value to or for the benefit of a customer of such member in the course of such commerce as compensation or in consideration for any services or facilities furnished by or through such customer in connection with the processing, handling, sale, or offering for sale of any products or commodities manufactured, sold, or offered for sale by such member, unless such payment or consideration is available on proportionally equal terms to all other customers competing in the distribution of such products or commodities.

(d) *Prohibited Discriminatory Services or Facilities.*—It is an unfair trade practice for any member of the industry engaged in commerce¹ to discriminate in favor of one purchaser against another purchaser or purchasers of a commodity bought for resale, with or without processing, by contracting to furnish or by furnishing, or by contributing to the furnishing of, any services or facilities connected with the processing, handling, sale, or offering for sale of such commodity so purchased upon terms not accorded to all purchasers on proportionally equal terms.

¹ See footnote, p. 460.

(e) *Illegal Price Discrimination.*—It is an unfair trade practice for any member of the industry or other person engaged in commerce,¹ in the course of such commerce, to discriminate in price in any other respect contrary to Section 2 of the Clayton Act as amended by the Act of Congress approved June 19, 1936 (Public, No. 692, 74th Congress), or knowingly to induce or receive a discrimination in price which is prohibited by such section as amended.

RULE 6.

The defamation of competitors by falsely imputing to them dishonorable conduct, inability to perform contracts, questionable credit standing, or by other false representations, or the false disparagement of the grade, quality, or manufacture of the products of competitors, or of their business methods, selling prices, values, credit terms, policies, or services, with the tendency, capacity, or effect of misleading or deceiving purchasers, prospective purchasers, or the consuming public, is an unfair trade practice.

RULE 7.

The making, or causing or permitting to be made or published, any false, untrue, or deceptive statement or representation, by way of advertisement or otherwise, concerning the grade, quality, quantity, substance, character, nature, origin, size, or preparation of any product of the industry, or in any other material respect, with the tendency, capacity, or effect of misleading or deceiving purchasers, prospective purchasers, or the consuming public, is an unfair trade practice.

RULE 8.

Wilfully enticing away the employees of competitors, with the purpose and effect of unduly hampering, injuring, or embarrassing competitors in their businesses, is an unfair trade practice.

RULE 9.

The practice of coercing the purchase of one or more products as a prerequisite to the purchase of one or more other products, where the effect may be to substantially lessen competition or tend to create a monopoly or to unreasonably restrain trade, is an unfair trade practice.

RULE 10.

Offering merchandise for sale at prices purported to be reduced from what are in fact fictitious prices, or offering merchandise for sale at a purported reduction in price when such purported reduction is in fact fictitious, with the tendency and capacity or effect of misleading or deceiving purchasers, prospective purchasers, or the consuming public, is an unfair trade practice.

¹ See footnote, p. 460.

RULE 11.

The use of the word "free" where not properly or fairly qualified when the article is in fact not free, with the tendency or capacity to mislead or deceive purchasers, prospective purchasers, or the consuming public, is an unfair trade practice.

RULE 12.

The practice of shipping or delivering products which do not conform to the samples submitted or representations made prior to securing the orders, without the consent of the purchasers to such substitutions and having the tendency, capacity, or effect of deceiving or misleading purchasers, prospective purchasers, or the consuming public, is an unfair trade practice.

RULE 13.

Directly or indirectly to give, or permit to be given, or offer to give, money or anything of value to agents, employees, or representatives of customers or prospective customers, or to agents, employees, or representatives of competitors' customers or prospective customers, without the knowledge of their employers or principals, as an inducement to influence their employers or principals to purchase or contract to purchase industry products from the maker of such gift or offer or to influence such employers or principals to refrain from dealing or contracting to deal with competitors, is an unfair trade practice.

RULE 14.

Securing information from competitors concerning their businesses by false or misleading statements or representations or by false impersonation of one in authority and the wrongful use thereof to unduly hinder or stifle the competition of such competitors is an unfair trade practice.

RULE 15.

In connection with the sale or offering for sale of products of the industry, representing through advertising or otherwise that such products conform to any standards recognized in or applicable to the industry when such is not the fact, with the tendency, capacity, or effect of misleading or deceiving purchasers, prospective purchasers, or the consuming public, is an unfair trade practice.

RULE 16.

For any person, firm, or corporation to hold himself or itself out to the public as a manufacturer or wholesaler when such is not the fact, or in any other manner to misrepresent the character, extent, or type of his or its business, with the tendency or capacity to mislead or deceive purchasers, prospective purchasers, or the consuming public, is an unfair trade practice.

RULE 17.

The false or deceptive marking or branding of products of the industry for the purpose or with the tendency, capacity, or effect of misleading or deceiving purchasers, prospective purchasers, or the consuming public with respect to grade, quality, quantity, use, size, material, content, origin, preparation, manufacture, or distribution of such products, or in any other material respect, is an unfair trade practice.

RULE 18.

Withholding from or inserting in invoices or sales tickets any statements or information by reason of which omission or insertion a false record is made, wholly or in part, of the transactions represented on the face of such invoices or sales tickets, with the purpose or effect of thereby misleading or deceiving purchasers, prospective purchasers, or the consuming public, is an unfair trade practice.

Promulgated by the Federal Trade Commission April 23, 1937.

TRADE PRACTICE RULES

FOR THE

WET GROUND MICA INDUSTRY

PROMULGATED MAY 4, 1937

STATEMENT BY THE COMMISSION

Trade practice rules for the Wet Ground Mica Industry, as herein set forth, have been promulgated by the Federal Trade Commission under its trade practice conference procedure.

A general trade practice conference, under the auspices of the Commission, was held for this industry at Washington, D. C., January 29, 1937, at which conference proposed trade practice rules were adopted and submitted by the industry to the Commission for its approval.

The industry membership embraces all persons, firms, and corporations engaged in the production, manufacture, and distribution of wet ground mica, which mica, in the form of a fine powder, is used principally in the rubber, wall paper, coated paper, and paint industries. The invested capital of the industry is estimated to aggregate about \$1,000,000, and the annual sales about \$300,000.

In the course of the proceedings the proposed rules, with certain modifications, were tentatively acted upon by the Commission and made available for a 15-day period upon public notice whereby opportunity was afforded to all interested or affected parties to present to the Commission their views regarding the same, including suggestions or objections, if any. Thereafter, upon further consideration of the entire matter, final action was taken whereby the rules appearing herein under Group I were approved by the Commission, and those shown under Group II were received by the Commission as expressions of the industry.

THE RULES

GROUP I*

RULE 1.

The selling, or offering to sell, wet ground mica below seller's cost, with the intent and with the effect of injuring a competitor and where the effect may be to substantially lessen competition or tend to create a monopoly or unreasonably restrain trade, is an unfair trade practice; all elements recognized by good accounting practice as proper elements of such cost shall be included in determining cost under this rule.

* See page VIII for headnote applicable to Group I Rules.

RULE 2.

The using of any product of the industry as a "loss leader" to induce the purchase of other merchandise, the sale of which merchandise is used to recoup the loss sustained on the "loss leader" product so sold, with the tendency, capacity, or effect of misleading or deceiving purchasers, prospective purchasers, or the consuming public, and which unfairly diverts trade from or otherwise injures competitors, is an unfair trade practice.

RULE 3.

The publishing or circulating by any member of the industry of false or misleading price quotations, price lists, terms or conditions of sale, or reports as to transportation costs, production, or sales, with the purpose and tendency or capacity to mislead or deceive purchasers, prospective purchasers, or the consuming public, is an unfair trade practice.

RULE 4.

(a) *Prohibited Discriminatory Differentials, Rebates, Refunds, Discounts, Credits, and Other Allowances.*—It is an unfair trade practice for any member of the industry engaged in commerce,¹ in the course of such commerce, to grant or allow, secretly or openly, directly or indirectly, any price differentials, rebates, refunds, discounts, credits, or other allowances which effectuate a discrimination in price between different purchasers of goods of like grade and quality where either or any of the purchases involved therein are in commerce¹ and where the effect thereof may be substantially to lessen competition or tend to create a monopoly in any line of commerce¹ or to injure, destroy, or prevent competition with any person who either grants or knowingly receives the benefit of such discrimination or with customers of either of them: *Provided, however—*

(1) That the goods involved in any such transaction are sold for use, consumption, or resale within any place under the jurisdiction of the United States;

(2) That nothing herein contained shall prevent differentials which make only due allowance for differences in the cost of manufacture, sale, or delivery resulting from the differing methods or quantities in which such commodities are to such purchasers sold or delivered;

(3) That nothing herein contained shall prevent persons engaged in selling goods, wares, or merchandise in commerce¹ from selecting their own customers in bona fide transactions and not in restraint of trade;

¹ See footnote, p. 460.

(4) That nothing herein contained shall prevent price changes from time to time where made in response to changing conditions affecting either (a) the market for the goods concerned, or (b) the marketability of the goods, such as, but not limited to, actual or imminent deterioration of perishable goods, obsolescence of seasonal goods, distress sales under court process, or sales in good faith in discontinuance of business in the goods concerned.

(b) *Prohibited Brokerage and Commissions.*—It is an unfair trade practice for any member of the industry engaged in commerce,¹ in the course of such commerce, to pay or grant, or to receive or accept, anything of value as a commission, brokerage, or other compensation, or any allowance or discount in lieu thereof, except for services rendered in connection with the sale or purchase of goods, wares, or merchandise, either to the other party to such transaction or to an agent, representative, or other intermediary therein where such intermediary is acting in fact for or in behalf, or is subject to the direct or indirect control, of any party to such transaction other than the person by whom such compensation is so granted or paid.

(c) *Prohibited Advertising or Promotional Allowances, Etc.*—It is an unfair trade practice for any member of the industry engaged in commerce¹ to pay or contract for the payment of advertising or promotional allowances or any other thing of value to or for the benefit of a customer of such member in the course of such commerce as compensation or in consideration for any services or facilities furnished by or through such customer in connection with the processing, handling, sale, or offering for sale of any products or commodities manufactured, sold, or offered for sale by such member, unless such payment or consideration is available on proportionally equal terms to all other customers competing in the distribution of such products or commodities.

(d) *Prohibited Discriminatory Services or Facilities.*—It is an unfair trade practice for any member of the industry engaged in commerce¹ to discriminate in favor of one purchaser against another purchaser or purchasers of a commodity bought for resale, with or without processing, by contracting to furnish or by furnishing, or by contributing to the furnishing of, any services or facilities connected with the processing, handling, sale, or offering for sale of such commodity so purchased upon terms not accorded to all purchasers on proportionally equal terms.

(e) *Illegal Price Discrimination.*—It is an unfair trade practice for any member of the industry or other person engaged in commerce,¹ in the course of such commerce, to discriminate in price in any other respect contrary to Section 2 of the Clayton Act as amended by the

¹ See footnote, p. 460.

Act of Congress approved June 19, 1936 (Public, No. 692, 74th Congress), or knowingly to induce or receive a discrimination in price which is prohibited by such section as amended.

RULE 5.

Withholding from or inserting in invoices any statements or information by reason of which omission or insertion a false record is made, wholly or in part, of the transactions represented on the face of such invoices, with the purpose or effect of thereby misleading or deceiving purchasers, prospective purchasers, or the consuming public, is an unfair trade practice.

RULE 6.

The defamation of competitors by falsely imputing to them dishonorable conduct, inability to perform contracts, questionable credit standing, or by other false representations, or the false disparagement of the grade, quality, or manufacture of the products of competitors, or of their business methods, selling prices, values, credit terms, policies, or services, with the tendency, capacity, or effect of misleading or deceiving purchasers, prospective purchasers, or the consuming public, is an unfair trade practice.

RULE 7.

Wilfully inducing or attempting to induce the breach of an existing contract or contracts between competitors and their customers or their suppliers by any false or deceptive means whatsoever, or wilfully interfering with or obstructing the performance of any such contractual duties or services by any such means, with the purpose and effect of unduly hampering, injuring, or prejudicing competitors in their businesses, is an unfair trade practice.

RULE 8.

The false or deceptive marking or branding of products of the industry, with the tendency, capacity, or effect of misleading or deceiving purchasers, prospective purchasers, or the consuming public with respect to the grade, quality, quantity, use, size, material, content, origin, preparation, manufacture, or distribution of such products, or in any other material respect, is an unfair trade practice.

RULE 9.

The making, or causing or permitting to be made or published, any false, untrue, or deceptive statement or representation, by way of advertisement or otherwise, concerning the grade, quality, quantity, use, size, material, content, origin, preparation, manufacture, or distribution of any industry products, or in any other material respect, with

the tendency, capacity, or effect of misleading or deceiving purchasers, prospective purchasers, or the consuming public, is an unfair trade practice.

RULE 10.

It is an unfair trade practice for a member of the industry directly or indirectly to give or offer to give, or permit or cause to be given, money or anything of value to agents, employees, or representatives of customers or prospective customers, or to agents, employees, or representatives of competitors' customers or prospective customers, without the knowledge of their employers or principals, as an inducement to influence their employers or principals to purchase or contract to purchase products manufactured or sold by such industry member or the maker of such gift or offer or to influence such employers or principals to refrain from dealing in the products of competitors or from dealing or contracting to deal with competitors.

GROUP II*

RULE A.

The industry approves the practice of each individual member of the industry independently publishing and circulating to the purchasing trade his own price lists fully setting forth his terms of sale.

RULE B.

The industry approves the giving of free samples of wet ground mica in sufficient quantity for experimental purposes and to acquaint purchasers or prospective purchasers with the grade or quality of the product offered for sale, where the giving of such free mica by any member of the industry is not, however, practiced or accomplished in such way or to such extent as to effectuate an illegal discrimination in price contrary to Section 2 of the Clayton Act as amended by the Act of Congress approved June 19, 1936 (Public, No. 692, 74th Congress, Robinson-Patman Act).

Promulgated by the Federal Trade Commission May 4, 1937.

* See page VIII for headnote applicable to Group II Rules.

TRADE PRACTICE RULES

FOR THE

CONCRETE BURIAL VAULT MANUFACTURING INDUSTRY

PROMULGATED JULY 10, 1937

STATEMENT BY THE COMMISSION

Trade practice rules for the Concrete Burial Vault Manufacturing Industry, as herein set forth, have been promulgated by the Federal Trade Commission under its trade practice conference procedure.

A general trade practice conference, under the auspices of the Commission, was held for this industry at Boston, Massachusetts, May 5, 1937, at which conference proposed trade practice rules were adopted and submitted by the industry to the Commission for its approval.

The business of this industry is the manufacture and sale, throughout the United States, of various types of concrete burial vaults. The members thereof, reported to be about 1,000 in number, have their principal places of business in approximately 28 States. The total capitalization of the industry is said to approximate \$25,000,000, and the aggregate annual volume of sales \$5,000,000.

In the course of the proceedings the proposed rules, with certain modifications, were tentatively acted upon by the Commission and made available for a 15-day period upon public notice, affording opportunity to all interested or affected parties to be heard or to present their written views, suggestions, or objections, if any.

Thereafter, upon consideration of the entire matter, final action was taken whereby the rules appearing herein under Group I were approved by the Commission, and those under Group II were received by the Commission as expressions of the industry.

THE RULES

GROUP I*

RULE 1.

It is an unfair trade practice for a member of the industry directly or indirectly to give or offer to give, or permit or cause to be given, money or anything of value to agents, employees, or representatives of customers or prospective customers, or to agents, employees, or representatives of competitors' customers or prospective customers, without the knowledge of their employers or principals, as an inducement to influence their employers or principals to purchase or contract to

* See page VIII for headnote applicable to Group I Rules.

purchase products manufactured or sold by such industry member or the maker of such gift or offer or to influence such employers or principals to refrain from dealing in the products of competitors or from dealing or contracting to deal with competitors.

RULE 2.

Wilfully inducing or attempting to induce the breach of existing contract or contracts between competitors and their customers or their suppliers by any false or deceptive means whatsoever, or wilfully interfering with or obstructing the performance of any such contractual duties or services by any such means, with the purpose and effect of unduly hampering, injuring, or prejudicing competitors in their businesses, is an unfair trade practice.

RULE 3.

The defamation of competitors by falsely imputing to them dishonorable conduct, inability to perform contracts, or questionable credit standing, or by other false representations, or the false disparagement of the grade, quality, composition, material, construction, durability, or process of manufacture of the products of competitors, or of their business methods, selling prices, values, credit terms, policies, or services, or conditions of employment, with the tendency, capacity, or effect of misleading or deceiving any purchasers or prospective purchasers of burial vaults, is an unfair trade practice.

RULE 4.

Wilfully enticing away the employees of competitors, with the purpose and effect of unduly hampering, injuring, or embarrassing competitors in their businesses, is an unfair trade practice.

RULE 5.

The imitation of the trade-marks, trade names, brands, labels, or other marks of identification of competitors, with the tendency, capacity, or effect of misleading or deceiving any purchasers or prospective purchasers of burial vaults, is an unfair trade practice.

RULE 6.

The practice of shipping or delivering products which do not conform to representations made prior to or at the time of securing an order, or the substitution of products inferior in quality to the kind ordered, without the consent of the purchaser to such substitution and with the effect of misleading or deceiving any purchasers or prospective purchasers of burial vaults, is an unfair trade practice.

RULE 7.

Securing information from competitors concerning their businesses

by false or misleading statements or representations or by false impersonation of one in authority and the wrongful use thereof to unduly hinder or stifle the competition of such competitors is an unfair trade practice.

RULE 8.

The false or deceptive marking, branding, or labeling of concrete burial vaults for the purpose or with the tendency, capacity, or effect of misleading or deceiving purchasers or prospective purchasers concerning the grade, quality, composition, material, construction, durability, or process of manufacture of such vaults, or in any other material respect, or the marking, branding, or labeling of such vaults by representations, statements, assertions, or claims concerning the capacity, property, or ability of such vaults to remain airtight, waterproof, or sweatproof when such representations, statements, assertions, or claims are not true in fact, or are misleading, or are not known to be true, is an unfair trade practice.

RULE 9.

Making, or causing to be made or published, directly or indirectly, any false, untrue, or deceptive statement, representation, guarantee, warranty, testimonial, or endorsement, by way of advertising (through newspapers, magazines, booklets, or other advertising media) or by radio, oral representation, or otherwise, in connection with the sale or distribution of concrete burial vaults and concerning the grade, quality, composition, material, construction, durability, or process of manufacture of such vaults, or in any other material respect, or the making of any representations, statements, assertions, or claims, directly or indirectly, concerning the capacity, property, or ability of such vaults to remain airtight, waterproof, or sweatproof when such representations, statements, assertions, or claims are not true in fact, or are misleading, or are not known to be true, with the tendency, capacity, or effect of misleading or deceiving any purchasers or prospective purchasers of burial vaults, is an unfair trade practice.

RULE 10.

Withholding from or inserting in invoices any statements or information by reason of which omission or insertion a false record is made, wholly or in part, of the transactions represented on the face of such invoices, with the purpose or effect of thereby misleading or deceiving any purchasers or prospective purchasers of burial vaults, is an unfair trade practice.

RULE 11.

The practice of selling industry products below the seller's cost, with the intent and with the effect of injuring a competitor and where

the effect may be substantially to lessen competition or tend to create a monopoly or unreasonably restrain trade, is an unfair trade practice; all elements recognized by good accounting practice as proper elements of such cost shall be included in determining cost under this rule.

RULE 12.

It is an unfair trade practice for any member of the industry to use the practice of shipping goods on consignment or pretended consignment for the purpose and with the effect of artificially clogging trade outlets and unduly restricting competitors' use of said trade outlets in getting their goods to consumers through regular channels of distribution, or with such purpose to entirely close said trade outlets to such competitors so as to substantially lessen competition or tend to create a monopoly or to unreasonably restrain trade: *Provided, however*, That nothing herein shall be construed or used as restricting or preventing consignment shipping or marketing of commodities in good faith and without artificial interference with competitors' use of the usual channels of distribution in such manner as thereby to suppress competition or restrain trade.

RULE 13.

(a) *Prohibited Discriminatory Differentials, Rebates, Refunds, Discounts, Credits, and Other Allowances.*—It is an unfair trade practice for any member of the industry engaged in commerce,¹ in the course of such commerce, to grant or allow, secretly or openly, directly or indirectly, any price differentials, rebates, refunds, discounts, credits, or other allowances which effectuate a discrimination in price between different purchasers of goods of like grade and quality where either or any of the purchases involved therein are in commerce¹ and where the effect thereof may be substantially to lessen competition or tend to create a monopoly in any line of commerce¹ or to injure, destroy, or prevent competition with any person who either grants or knowingly receives the benefit of such discrimination or with customers of either of them: *Provided, however*—

(1) That the goods involved in any such transaction are sold for use, consumption, or resale within any place under the jurisdiction of the United States;

(2) That nothing herein contained shall prevent differentials which make only due allowance for differences in the cost of manufacture, sale, or delivery resulting from the differing methods or quantities in which such commodities are to such purchasers sold or delivered;

(3) That nothing herein contained shall prevent persons engaged in selling goods, wares, or merchandise in commerce¹ from selecting their own customers in bona fide transactions and not in restraint of trade;

¹ See footnote, p. 460.

(4) That nothing herein contained shall prevent price changes from time to time where made in response to changing conditions affecting either (a) the market for the goods concerned, or (b) the marketability of the goods, such as, but not limited to, actual or imminent deterioration of perishable goods, obsolescence of seasonal goods, distress sales under court process, or sales in good faith in discontinuance of business in the goods concerned.

(b) *Prohibited Brokerage and Commissions.*—It is an unfair trade practice for any member of the industry engaged in commerce,¹ in the course of such commerce, to pay or grant, or to receive or accept, anything of value as a commission, brokerage, or other compensation, or any allowance or discount in lieu thereof, except for services rendered in connection with the sale or purchase of goods, wares, or merchandise, either to the other party to such transaction or to an agent, representative, or other intermediary therein where such intermediary is acting in fact for or in behalf, or is subject to the direct or indirect control, of any party to such transaction other than the person by whom such compensation is so granted or paid.

(c) *Prohibited Advertising or Promotional Allowances, Etc.*—It is an unfair trade practice for any member of the industry engaged in commerce¹ to pay or contract for the payment of advertising or promotional allowances or any other thing of value to or for the benefit of a customer of such member in the course of such commerce as compensation or in consideration for any services or facilities furnished by or through such customer in connection with the processing, handling, sale, or offering for sale of any products or commodities manufactured, sold, or offered for sale by such member, unless such payment or consideration is available on proportionally equal terms to all other customers competing in the distribution of such products or commodities.

(d) *Prohibited Discriminatory Services or Facilities.*—It is an unfair trade practice for any member of the industry engaged in commerce¹ to discriminate in favor of one purchaser against another purchaser or purchasers of a commodity bought for resale, with or without processing, by contracting to furnish or by furnishing, or by contributing to the furnishing of, any services or facilities connected with the processing, handling, sale, or offering for sale of such commodity so purchased upon terms not accorded to all purchasers on proportionally equal terms.

(e) *Illegal Price Discrimination.*—It is an unfair trade practice for any member of the industry or other person engaged in commerce,¹ in the course of such commerce, to discriminate in price in any other respect contrary to Section 2 of the Clayton Act as amended by the

¹ See footnote, p. 460.

Act of Congress approved June 19, 1936 (Public, No. 692, 74th Congress), or knowingly to induce or receive a discrimination in price which is prohibited by such section as amended.

GROUP II*

RULE A.

The industry approves the practice of each individual member of the industry independently publishing and circulating to the purchasing trade his own price lists fully setting forth his terms of sale.

RULE B.

It is the judgment of the industry that each member should independently keep proper and accurate records for determining his costs.

RULE C.

The industry approves the practice of handling business disputes between members of the industry and their customers in a fair and reasonable manner, coupled with a spirit of moderation and good will, and every effort should be made by the disputants themselves to compose their differences. If unable to do so they should, if possible, submit these disputes to arbitration.

A Committee on Trade Practices is hereby created by the industry to cooperate with the Federal Trade Commission and to perform such acts as may be legal and proper to put these rules into effect.

Promulgated by the Federal Trade Commission July 10, 1937.

* See page VIII for headnote applicable to Group II Rules.

TRADE PRACTICE RULES

FOR THE

RAYON INDUSTRY

PROMULGATED OCTOBER 26, 1937

STATEMENT BY THE COMMISSION

Trade practice rules for the Rayon Industry, as herein set forth, are promulgated by the Federal Trade Commission under its trade practice conference procedure. Their purpose is to provide for proper fiber identification and disclosure of rayon and rayon products and for the prevention of misinformation, misrepresentation, and deception, in the interest of fair competition and consumer protection.

According to the most recent figures available from authoritative sources, the total volume of production of rayon by the various processes in the United States for the year 1936 amounted, approximately, to 290,000,000 pounds. Its production, fabrication, and distribution form a large and important part of the general textile industry in the United States.

In the course of the proceedings for the establishment of such rules, and following a trade practice conference on the subject in New York City, September 16, 1937, proposed rules as tentatively revised by the Commission were made available upon public notice to all interested or affected parties, affording them opportunity to present their views, suggestions, or objections, if any, and to be heard in respect to the proposed rules. Accordingly, public hearing was held by the Commission for this purpose at Washington, October 8, 1937, and various representatives of the industry, together with representatives of other interested parties and groups, were heard.

Inasmuch as the Group I rules are considered by the Commission to express the requirements of law, they may be accepted and followed by all marketers as a guide, and should be considered as binding requirements of the existing law in transactions within Federal jurisdiction.

The rules herein promulgated shall supersede and take the place of the resolution released by the Commission October 31, 1925, concerning the use of the term "Rayon," and shall also supersede and take the place of the Commission's later announcement of February 1, 1929, respecting the intent and effect of such resolution.

THE RULES

The rules promulgated herein by the Commission are designed to

foster and promote fair competitive conditions and the protection of the purchasing and consuming public in the interest of both industry and the public. The requirements of the rules with respect to fiber, yarn, thread, strands, or fabric are likewise applicable to such articles or commodities when contained in garments or other textile products or articles as well as when advertised, offered for sale, sold, or distributed in the form of fiber, yarn, thread, strands, or fabric.

GROUP I*

RULE 1. *Generic Scope of word "Rayon."*

The word rayon is the generic term for manufactured textile fiber or yarn produced chemically from cellulose or with a cellulose base and for thread, strands, or fabric made therefrom, regardless of whether such fiber or yarn be made under the viscose, acetate, cuprammonium, nitrocellulose, or other process. It is an unfair trade practice to cause such fiber or yarn or thread, strands, or fabric made therefrom to be sold, offered for sale, distributed, advertised, described, branded, labeled, or otherwise represented: (1) as not being rayon; or (2) as being something other than rayon; or (3) without disclosure of the fact that such material or product is rayon, made clearly and unequivocally in the invoices and labeling and in all advertising matter, sales promotional descriptions, or representations thereof, however disseminated or published.

RULE 2. *Designation of Manufacturing Processes.*

It is an unfair trade practice to cause any such rayon product to be represented as having been made by a certain process when such is not the fact or when the same has been made by a different process, or otherwise to cause the character, properties, quality, or grade of any such rayon product to be represented falsely or deceptively. Nothing in these rules shall prohibit, in conjunction with the word or designation "rayon," the use of words, terms, phrases, statements, or representations which truthfully and accurately designate or describe the process by which said rayon was manufactured, such as, for example,

"Viscose Rayon" or "Rayon Manufactured by the Viscose Process"

"Acetate Rayon" or "Rayon Manufactured by the Acetate Process"

"Cuprammonium Rayon" or "Rayon Manufactured by the Cuprammonium Process"

* See page VIII for headnote applicable to Group I Rules.

"Nitrocellulose Rayon" or "Rayon Manufactured by the Nitrocellulose Process."

Provided, however, That in any such term, phrase, statement, or representation said word "rayon" is set forth with at least equal prominence, conspicuousness, and emphasis so as not to be misleadingly or deceptively minimized, obscured, or rendered otherwise inconspicuous.

RULE 3. *Trade-marks.*

Nothing in these rules shall prohibit the truthful and accurate use of the trade-mark of the manufacturer, processor, seller, or distributor of any such rayon fiber, yarn, thread, strands, or fabric, such as, for example, "Celanese Rayon," "Acele Rayon," "Du Pont Rayon," "Bemberg Rayon," "Seraceta Rayon," or other similar representation: *Provided,* That the term "rayon" as descriptive of the product is set forth as a part of such term, phrase, statement, or representation so used, or in immediate conjunction therewith, and with at least equal prominence, conspicuousness, and emphasis, to the end that said word "rayon" and the fact that the product is rayon will not be misleadingly or deceptively minimized, obscured, or rendered otherwise inconspicuous: *And provided further,* That any such term, phrase, statement, or representation so used is otherwise truthful and non-deceptive.

RULE 4. *The Terms "Silk," "Pure Dye," "Wool," "Linen," "Flax," "Cotton," Etc.*

It is an unfair trade practice to cause to be used, as descriptive of rayon fiber, or of yarn, thread, strands, or fabric composed in whole or in part of rayon, the word "silk" or the distinctive term or phrase "pure dye," or the words "wool," "linen," "flax," "cotton," or any other word, term, phrase, or representation of similar import: *Provided, however,* That nothing in this rule shall prohibit the use of the word "silk," "wool," "linen," "flax," or "cotton" in a term, phrase, statement, or representation truthfully and accurately indicating, in harmony with the requirements of Rule 6 for mixed goods, that such yarn, thread, strand, or fabric is composed in part of silk, wool, linen, flax, or cotton as the case may be.

RULE 5. *Terms Relating to Types of Construction or Weave.*

It is an unfair trade practice to cause to be used as descriptive of rayon fiber, thread, strands, yarn, or fabric the words "taffeta," "chiffon," "velvet," "crepe," "georgette," or any other word, term, phrase, or representation which is associated in the minds of the purchasing or consuming public with silk, wool, linen, flax, cotton, or with any fiber, yarn, thread, strand, or fabric other than rayon; except, however, nothing in these rules shall prohibit the use of any word, term, phrase, or designation truthfully indicating the type

of weave or construction: *Provided*, Such word, term, phrase, or designation be qualified by the word "rayon" so as clearly to show that such product is in fact rayon or contains rayon and other materials as the case may be, disclosed in accordance with the requirements of Rule 6 as to mixed goods, such as, for example, "Rayon Taffeta," "Rayon Crepe," "Rayon Velvet," when fabric is composed wholly of rayon, or "Rayon and Silk Taffeta" when fabric is composed of rayon in greater and silk in lesser proportion: *Provided, however*, That in the use of any such term, phrase, or designation the word "rayon" shall be set forth therein with at least equal prominence, conspicuousness, and emphasis as the other word or words in each such term, phrase, or designation, to the end that said word "rayon" and the fact that said product contains such rayon shall not be misleadingly or deceptively minimized, obscured, or rendered otherwise inconspicuous.

RULE 6. *Mixed Goods.*

In the case of yarn, thread, strands, or fabric composed of a mixture of rayon and other kinds of fiber or substances (other than necessary dyeing and finishing materials), full and nondeceptive disclosure of the rayon and other content of such product should be made; and it is an unfair trade practice to conceal, or fail or refuse to make such disclosure of, the presence of any constituent of such product, having the capacity, tendency, or effect of misleading or deceiving purchasers or the consuming public. Such disclosure of the fiber content of said products, pursuant to this rule, shall be made by accurately designating and naming each constituent fiber thereof in the order of its predominance by weight, beginning with the largest single constituent; such as, for example, "Rayon, Wool, and Silk" for yarn, thread, strands, or fabric composed of rayon, wool, and silk and containing rayon in larger proportion than either silk or wool and containing wool in greater proportion than silk; subject, however, to the following:

(I) In setting forth a disclosure of the names of the fiber contained in any such mixed product of two or more fibers, the respective name of any such fiber shall not be set forth in type or manner so disproportionately enlarged, emphasized, or conspicuously placed as thereby to have the capacity, tendency, or effect of misleading or deceiving purchasers or the consuming public into the belief that a greater proportion of such over-emphasized fiber is present than is in fact true; such as, for example, in printing or otherwise setting forth said illustrative disclosure of "Rayon, Wool, and Silk," the word "wool" or the word "silk" shall not be disproportionately enlarged or otherwise emphasized in such manner as to have the capacity, tendency, or effect of misleading or deceiving purchasers or the consuming public in respect

to the proportion or effective character of the wool or the silk in such mixed product.

(II) Where the fiber or fibers comprising at least 95% of such mixed product are disclosed not only by name as required by this rule but also with the percentage of each in the order of predominance by weight as recommended in Rule A, then the remaining 5% or less of the fiber content of such product may be designated and disclosed as "Other Fibers," or "Miscellaneous Fibers:" *Provided*, Such 5% proportion or less is not definitely known to be composed of one fiber or readily ascertainable as consisting of but one fiber, but on the contrary is composed of fibers which may be of various kinds, the percentages or quantities of each of which are not definitely known or readily ascertainable: *And provided further*, That such fiber content designated or disclosed as "Other Fibers" or "Miscellaneous Fibers" is not otherwise misrepresented. Illustrative examples of the disclosure provided for under this rule are as follows: "50% Rayon, 46% Silk, 4% Other Fibers" or "55% Rayon, 40% Wool, 5% Miscellaneous Fibers" for products composed of the respective stated percentages of rayon, silk, and wool and composed of 5% of fibers the proportion or percentage of each of which is not known or readily ascertainable, including such small additional amounts of rayon, wool, or silk as may be present due to unavoidable variations in manufacturing processes.

(III) In making disclosure of fiber content under these rules by choosing to specifically name any particular fiber in a mixed product which is present in the proportion of 5% or less by weight, the percentage in which such specifically named fiber is present in the product shall then be clearly and truthfully disclosed, such as, for example, "2% Wool" or "2% Silk," to the end that purchasers or the consuming public may not be misled or deceived into the erroneous belief that said fiber is present in a greater or lesser proportion than is in fact true.

(IV) Nothing in any of these rules, however, shall be construed as relieving anyone of the requirement of making full, specific, and accurate disclosure of the presence, in any fiber, yarn, thread, strand, or fabric, of any substance other than fiber used therein as loading material or as an adulterant, or of the requirement of otherwise avoiding deceptive concealment or misrepresentation in respect to such substance.

RULE 7. *Encouraging or Promoting the Use of Misleading Merchandising Methods.*

It is an unfair trade practice to cause any such rayon fiber, or yarn, thread, strands, or fabric made therefrom, to be advertised,

represented, offered for sale, sold, or distributed through any means or devices, or under any conditions, which are calculated to cause, promote, or aid, or which have the capacity and tendency or effect of causing, promoting, or aiding, the marketing of such products in the channels of trade or commerce under circumstances or representations which are false, misleading, or deceptive to purchasers, prospective purchasers, or the consuming public. The following is set forth as a specific example, without limitation as to others, of the type of practices prohibited by this rule:

(a) Causing, promoting, or aiding, in a manner calculated to mislead or deceive, the advertisement, offering for sale, or sale of any rayon or rayon products, at silk counters or in the silk department of dealers or as being manufactured or distributed by a silk company or silk corporation, or other firm or corporation or organization whose name indicates a silk business, without making full and unequivocal disclosure that such products are rayon and not silk or are a mixture of rayon and other materials disclosed in accordance with the requirements of Rule 6 as to mixed goods, and without taking such other steps as may be necessary to prevent misrepresentation or deception.

GROUP II*

RULE A. *Disclosure of Proportions of Mixed Fibers.*

The practice of making full and accurate disclosure of the proportions or percentages of constituents in such mixed goods is approved as a proper practice to the end that salespersons, dealers, and other marketers of such products may have accurate information of the contents and may in turn correctly inform the purchasing and consuming public thereof, thereby avoiding confusion, misunderstanding, or misrepresentation as to the nature or content of such products. Any action taken in following this rule shall be consonant with the requirements of the foregoing Group I rules.

RULE B. *Information as to Treatment and Care of Product.*

The practice, by producers, manufacturers, and distributors, of furnishing and disseminating, through tags, labels, advertisements, or other publicity, accurate information as to the proper treatment, care, and cleaning of rayon or rayon products is approved and recommended as a desirable practice to follow in the interest of enabling consumers to obtain and enjoy full benefit of the desirable qualities and service of such products.

Promulgated by the Federal Trade Commission October 26, 1937.

* See page VIII for headnote applicable to Group II Rules.

TRADE PRACTICE RULES

FOR THE

HOUSE DRESS AND WASH FROCK MANUFACTURING INDUSTRY

PROMULGATED DECEMBER 31, 1937

STATEMENT BY THE COMMISSION

Trade practice rules for the House Dress and Wash Frock Manufacturing Industry, as herein set forth, are promulgated by the Federal Trade Commission under its trade practice conference procedure.

The products of the industry consist of house dresses and wash frocks made principally of cotton and other washable fabrics. The industry embraces all manufacturers of such dresses. The manufacturers sell and distribute such dresses throughout the country to department stores, retail dress shops, jobbers, wholesalers, and other merchants. In the aggregate they are said to have an annual production of about 12,000,000 dozens of dresses with capital approximating \$35,000,000 and annual dollar volume of sales about \$150,000,000.

In the course of the proceedings a general trade practice conference was held upon application of representatives of the industry. Thereafter, public hearing in respect to proposed rules was ordered by the Commission, upon notice to all interested or affected parties, whereby copies of the proposed rules were made available and all such parties were afforded opportunity to present to the Commission their views regarding the proposed rules, including suggestions or objections, if any. Thereafter, and upon further consideration of the entire matter, final Commission action was taken and the rules in the form appearing herein were approved by the Commission as to Group I and in respect to Group II were received by the Commission as expressions of the industry.

THE RULES

GROUP I*

RULE 1.

Making, or causing to be made or published, directly or indirectly, any false, untrue, or deceptive statement or representation, by way of advertisement or otherwise, concerning the grade, quality, quantity, substance, character, nature, origin, size, serviceability, color, colorfastness, workmanship, washability, fiber content or identification, shrinkage properties, manufacture, or distribution of any product

* See page VIII for headnote applicable to Group I Rules.

of the industry, or in any other material respect, with the tendency, capacity, or effect of misleading or deceiving purchasers, prospective purchasers, or the consuming public, is an unfair trade practice.

RULE 2.

The false or deceptive marking or branding of products of the industry for the purpose or with the tendency, capacity, or effect of misleading or deceiving purchasers, prospective purchasers, or the consuming public with respect to the grade, quality, quantity, substance, character, nature, origin, size, serviceability, color, colorfastness, workmanship, washability, fiber content or identification, shrinkage properties, manufacture, or distribution of such products, or in any other material respect, is an unfair trade practice.

RULE 3.

The defamation of competitors by falsely imputing to them dishonorable conduct, inability to perform contracts, questionable credit standing, or by other false representations, or the false disparagement of the grade, quality, or manufacture of the products of competitors, or of their business methods, selling prices, values, credit terms, policies, or services, with the tendency, capacity, or effect of misleading or deceiving purchasers, prospective purchasers, or the consuming public, is an unfair trade practice.

RULE 4.

Wilfully enticing away the employees of competitors, with the purpose and effect of unduly hampering, injuring, or embarrassing competitors in their businesses, is an unfair trade practice.

RULE 5.

Wilfully inducing or attempting to induce the breach of existing contract or contracts between competitors and their customers or their suppliers by any false or deceptive means whatsoever, or wilfully interfering with or obstructing the performance of any such contractual duties or services by any such means, with the purpose and effect of unduly hampering, injuring, or prejudicing competitors in their businesses, is an unfair trade practice.

RULE 6.

The practice of selling industry products below the seller's cost, with the intent and with the effect of injuring a competitor and where the effect may be substantially to lessen competition or tend to create a monopoly or unreasonably restrain trade, is an unfair trade practice; all elements recognized by good accounting practice as proper elements of such cost shall be included in determining cost under this rule.

RULE 7.

Securing information from competitors concerning their businesses by false or misleading statements or representations or by false impersonation of one in authority and the wrongful use thereof to unduly hinder or stifle the competition of such competitors is an unfair trade practice.

RULE 8.

Directly or indirectly to give, or permit to be given, or offer to give, money or anything of value to agents, employees, or representatives of customers or prospective customers, or to agents, employees, or representatives of competitors' customers or prospective customers, without the knowledge of their employers or principals, as an inducement to influence their employers or principals to purchase or contract to purchase industry products from the maker of such gift or offer or to influence such employers or principals to refrain from dealing or contracting to deal with competitors, is an unfair trade practice.

RULE 9.

Withholding from or inserting in invoices any statements or information by reason of which omission or insertion a false record is made, wholly or in part, of the transactions represented on the face of such invoices, with the purpose or effect of thereby misleading or deceiving purchasers, prospective purchasers, or the consuming public, is an unfair trade practice.

RULE 10.

It is an unfair trade practice for any member of the industry to use the practice of shipping goods on consignment or pretended consignment for the purpose and with the effect of artificially clogging trade outlets and unduly restricting competitors' use of said trade outlets in getting their goods to consumers through regular channels of distribution, or with such purpose to entirely close said trade outlets to such competitors so as to substantially lessen competition or tend to create a monopoly or to unreasonably restrain trade: *Provided, however,* That nothing herein shall be construed or used as restricting or preventing consignment shipping or marketing of commodities in good faith and without artificial interference with competitors' use of the usual channels of distribution in such manner as thereby to suppress competition or restrain trade.

RULE 11.

(a) *Prohibited Discriminatory Rebates, Refunds, Discounts, Credits, and Other Price Differentials.*—It is an unfair trade practice for any member of the industry engaged in commerce,¹ in the course of such commerce, to grant or allow, secretly or openly, directly or indi-

¹ See footnote, p. 460.

rectly, any rebate, refund, discount, credit, or other price differential, where such rebate, refund, discount, credit, or other price differential effects a discrimination in price between different purchasers of goods of like grade and quality, and where either or any of the purchases involved therein are in commerce,¹ and where the effect thereof may be substantially to lessen competition or tend to create a monopoly in any line of commerce,¹ or to injure, destroy, or prevent competition with any person who either grants or knowingly receives the benefit of such discrimination or with customers of either of them: *Provided, however—*

(1) That the goods involved in any such transaction are sold for use, consumption, or resale within any place under the jurisdiction of the United States;

(2) That nothing herein contained shall prevent differentials which make only due allowance for differences in the cost of manufacture, sale, or delivery resulting from the differing methods or quantities in which such commodities are to such purchasers sold or delivered;

(3) That nothing herein contained shall prevent persons engaged in selling goods, wares, or merchandise in commerce¹ from selecting their own customers in bona fide transactions and not in restraint of trade;

(4) That nothing herein contained shall prevent price changes from time to time where made in response to changing conditions affecting either (a) the market for the goods concerned, or (b) the marketability of the goods, such as, but not limited to, actual or imminent deterioration of perishable goods, obsolescence of seasonal goods, distress sales under court process, or sales in good faith in discontinuance of business in the goods concerned.

(b) *Prohibited Brokerage and Commissions.*—It is an unfair trade practice for any member of the industry engaged in commerce,¹ in the course of such commerce, to pay or grant, or to receive or accept, anything of value as a commission, brokerage, or other compensation, or any allowance or discount in lieu thereof, except for services rendered in connection with the sale or purchase of goods, wares, or merchandise, either to the other party to such transaction or to an agent, representative, or other intermediary therein where such intermediary is acting in fact for or in behalf, or is subject to the direct or indirect control, of any party to such transaction other than the person by whom such compensation is so granted or paid.

(c) *Prohibited Advertising or Promotional Allowances, Etc.*—It is an unfair trade practice for any member of the industry engaged in commerce¹ to pay or contract for the payment of advertising or

¹ See footnote, p. 460.

promotional allowances or any other thing of value to or for the benefit of a customer of such member in the course of such commerce as compensation or in consideration for any services or facilities furnished by or through such customer in connection with the processing, handling, sale, or offering for sale of any products or commodities manufactured, sold, or offered for sale by such member, unless such payment or consideration is available on proportionally equal terms to all other customers competing in the distribution of such products or commodities.

(d) *Prohibited Discriminatory Services or Facilities.*—It is an unfair trade practice for any member of the industry engaged in commerce¹ to discriminate in favor of one purchaser against another purchaser or purchasers of a commodity bought for resale, with or without processing, by contracting to furnish or by furnishing, or by contributing to the furnishing of, any services or facilities connected with the processing, handling, sale, or offering for sale of such commodity so purchased upon terms not accorded to all purchasers on proportionally equal terms.

(e) *Illegal Price Discrimination.*—It is an unfair trade practice for any member of the industry or other person engaged in commerce,¹ in the course of such commerce, to discriminate in price in any other respect contrary to Section 2 of the Clayton Act as amended by the Act of Congress approved June 19, 1936 (Public, No. 692, 74th Congress), or knowingly to induce or receive a discrimination in price which is prohibited by such section as amended.

RULE 12. *Discriminatory Returns.*

It is an unfair trade practice for any member of the industry engaged in commerce¹ to discriminate in favor of one customer-purchaser against another customer-purchaser of dresses, bought from such member of the industry for resale, by contracting to furnish or furnishing in connection therewith, *upon terms not accorded to all customer-purchasers on proportionally equal terms*, the service or facility whereby such favored purchaser is accorded the privilege of returning dresses so purchased and receiving therefor credit or refund of purchase price: *Provided, however*, Nothing in any of the rules herein shall prohibit or be used to prevent the return of merchandise by purchaser, for credit or refund of purchase price, when and because such merchandise has not been properly labeled by the seller as to fiber content, or has been otherwise falsely or deceptively labeled or represented, or when and because such merchandise is defective in material, workmanship, or in any other respect contrary to warranty or purchase contract.

¹ See footnote, p. 460.

GROUP II*

RULE A.

In view of the fact that certain fabric may be damaged or destroyed by contact with certain types of deodorants or depilatories, the industry recommends that in the case of garments made of such fabric a tag or label be placed thereon by the manufacturer informing the purchasing public of such fact and of the desirability of avoiding contact between the fabric and such deodorants or depilatories which will damage or destroy the fabric.

RULE B. *Return of Merchandise—Expression of Industry.*

The practice, by members of the industry, of selling merchandise and later permitting the purchaser to return it for credit or refund of purchase price, without just cause, creates waste and loss, increases the cost of doing business, to the detriment of both the industry and the public, and is condemned by the industry, subject, however, to requirements and limitations set forth in the provisions of Rule 12 of Group I, herein.

RULE C.

The industry approves the practice of handling business disputes between members of the industry and their customers in a fair and reasonable manner, coupled with a spirit of moderation and good will, and every effort should be made by the disputants themselves to compose their differences. If unable to do so they should, if possible, submit these disputes to arbitration.

RULE D.

Contracts are business obligations which should be performed in letter and in spirit. The repudiation of contracts by sellers on a rising market or by buyers on a declining market is condemned by the industry.

RULE E.

The industry recommends that truthful and accurate descriptions of the washability, colorfastness, and shrinkage properties of fabrics used be attached to the dress or frock or be printed on the labels used by members of the industry on such dresses or frocks.

Promulgated by the Federal Trade Commission December 31, 1937.

* See page VIII for headnote applicable to Group II Rules.

TRADE PRACTICE RULES

FOR THE

POPULAR PRICED DRESS MANUFACTURING INDUSTRY

PROMULGATED DECEMBER 31, 1937

STATEMENT BY THE COMMISSION

Trade practice rules for the Popular Priced Dress Manufacturing Industry, as herein set forth, are promulgated by the Federal Trade Commission under its trade practice conference procedure.

The products of the industry consist of so-called popular priced dresses for juniors, misses, and ladies, generally selling at wholesale for less than \$5. The dresses are made of rayon, cotton, wool, silk, linen, or mixtures thereof, not including, however, the class of dresses known as house dresses and wash frocks. The industry embraces all manufacturers of said popular priced dresses. The manufacturers sell and distribute such dresses throughout the country to department stores, retail dress shops, jobbers, wholesalers, and other merchants. The industry comprises about 500 manufacturers with an aggregate annual volume of sales said to amount to about \$135,000,000, and employs about 60,000 persons.

In the course of the proceedings a general trade practice conference was held upon application of representatives of the industry. Thereafter, public hearing in respect to proposed rules was ordered by the Commission, upon notice to all interested or affected parties, whereby copies of the proposed rules were made available and all such parties were afforded opportunity to present to the Commission their views regarding the proposed rules, including suggestions or objections, if any. Thereafter, and upon further consideration of the entire matter, final Commission action was taken and the rules in the form appearing herein were approved by the Commission as to Group I and in respect to Group II were received by the Commission as expressions of the industry.

THE RULES

GROUP I*

RULE 1.

Wilfully inducing or attempting to induce the breach of existing contract or contracts between competitors and their customers or their suppliers by any false or deceptive means whatsoever, or wilfully interfering with or obstructing the performance of any such contrac-

* See page VIII for headnote applicable to Group I Rules.

tual duties or services by any such means, with the purpose and effect of unduly hampering, injuring, or prejudicing competitors in their businesses, is an unfair trade practice.

RULE 2.

The defamation of competitors by falsely imputing to them dishonorable conduct, inability to perform contracts, questionable credit standing, or by other false representations, or the false disparagement of the grade, quality, or manufacture of the products of competitors, or of their business methods, selling prices, values, credit terms, policies, or services, with the tendency, capacity, or effect of misleading or deceiving purchasers, prospective purchasers, or the consuming public, is an unfair trade practice.

RULE 3.

Making, or causing to be made or published, directly or indirectly, any false, untrue, or deceptive statement or representation, by way of advertisement or otherwise, concerning the grade, quality, quantity, substance, character, nature, origin, size, or preparation of any product of the industry, or in any other material respect, with the tendency, capacity, or effect of misleading or deceiving purchasers, prospective purchasers, or the consuming public, is an unfair trade practice.

RULE 4.

Wilfully enticing away the employees of competitors, with the purpose and effect of unduly hampering, injuring, or embarrassing competitors in their businesses, is an unfair trade practice.

RULE 5.

(a) *Prohibited Discriminatory Rebates, Refunds, Discounts, Credits, and Other Price Differentials.*—It is an unfair trade practice for any member of the industry engaged in commerce,¹ in the course of such commerce, to grant or allow, secretly or openly, directly or indirectly, any rebate, refund, discount, credit, or other price differential, where such rebate, refund, discount, credit, or other price differential effects a discrimination in price between different purchasers of goods of like grade and quality and where either or any of the purchases involved therein are in commerce¹ and where the effect thereof may be substantially to lessen competition or tend to create a monopoly in any line of commerce¹ or to injure, destroy, or prevent competition with any person who either grants or knowingly receives the benefit of such discrimination or with customers of either of them: *Provided, however—*

- (1) That the goods involved in any such transaction are sold

¹ See footnote, p. 460.

for use, consumption, or resale within any place under the jurisdiction of the United States;

(2) That nothing herein contained shall prevent differentials which make only due allowance for differences in the cost of manufacture, sale, or delivery resulting from the differing methods or quantities in which such commodities are to such purchasers sold or delivered;

(3) That nothing herein contained shall prevent persons engaged in selling goods, wares, or merchandise in commerce¹ from selecting their own customers in bona fide transactions and not in restraint of trade;

(4) That nothing herein contained shall prevent price changes from time to time where made in response to changing conditions affecting either (a) the market for the goods concerned, or (b) the marketability of the goods, such as, but not limited to, actual or imminent deterioration of perishable goods, obsolescence of seasonal goods, distress sales under court process, or sales in good faith in discontinuance of business in the goods concerned.

(b) *Prohibited Brokerage and Commissions.*—It is an unfair trade practice for any member of the industry engaged in commerce,¹ in the course of such commerce, to pay or grant, or to receive or accept, anything of value as a commission, brokerage, or other compensation, or any allowance or discount in lieu thereof, except for services rendered in connection with the sale or purchase of goods, wares, or merchandise, either to the other party to such transaction or to an agent, representative, or other intermediary therein where such intermediary is acting in fact for or in behalf, or is subject to the direct or indirect control, of any party to such transaction other than the person by whom such compensation is so granted or paid.

(c) *Prohibited Advertising or Promotional Allowances, Etc.*—It is an unfair trade practice for any member of the industry engaged in commerce¹ to pay or contract for the payment of advertising or promotional allowances or any other thing of value to or for the benefit of a customer of such member in the course of such commerce as compensation or in consideration for any services or facilities furnished by or through such customer in connection with the processing, handling, sale, or offering for sale of any products or commodities manufactured, sold, or offered for sale by such member, unless such payment or consideration is available on proportionally equal terms to all other customers competing in the distribution of such products or commodities.

(d) *Prohibited Discriminatory Services or Facilities.*—It is an un-

¹ See footnote, p. 460.

fair trade practice for any member of the industry engaged in commerce¹ to discriminate in favor of one purchaser against another purchaser or purchasers of a commodity bought for resale, with or without processing, by contracting to furnish or by furnishing, or by contributing to the furnishing of, any services or facilities connected with the processing, handling, sale, or offering for sale of such commodity so purchased upon terms not accorded to all purchasers on proportionally equal terms.

(e) *Illegal Price Discrimination.*—It is an unfair trade practice for any member of the industry or other person engaged in commerce,¹ in the course of such commerce, to discriminate in price in any other respect contrary to Section 2 of the Clayton Act as amended by the Act of Congress approved June 19, 1936 (Public, No. 692, 74th Congress), or knowingly to induce or receive a discrimination in price which is prohibited by such section as amended.

RULE 6. *Discriminatory Returns.*

It is an unfair trade practice for any member of the industry engaged in commerce¹ to discriminate in favor of one customer-purchaser against another customer-purchaser of dresses, bought from such member of the industry for resale, by contracting to furnish or furnishing in connection therewith, *upon terms not accorded to all customer-purchasers on proportionally equal terms*, the service or facility whereby such favored purchaser is accorded the privilege of returning dresses so purchased and receiving therefor credit or refund of purchase price: *Provided, however*, Nothing in any of the rules herein shall prohibit or be used to prevent the return of merchandise by purchaser, for credit or refund of purchase price, when and because such merchandise has not been properly labeled by the seller as to fiber content, or has been otherwise falsely or deceptively labeled or represented, or when and because such merchandise is defective in material, workmanship, or in any other respect contrary to warranty or purchase contract.

RULE 7.

The practice of selling industry products below the seller's cost, with the intent and with the effect of injuring a competitor and where the effect may be substantially to lessen competition or tend to create a monopoly or unreasonably restrain trade, is an unfair trade practice; all elements recognized by good accounting practice as proper elements of such cost shall be included in determining cost under this rule.

¹ See footnote, p. 460.

RULE 8.

Directly or indirectly to give, or permit to be given, or offer to give, money or anything of value to agents, employees, or representatives of customers or prospective customers, or to agents, employees, or representatives of competitors' customers or prospective customers, without the knowledge of their employers or principals, as an inducement to influence their employers or principals to purchase or contract to purchase industry products from the maker of such gift or offer or to influence such employers or principals to refrain from dealing or contracting to deal with competitors, is an unfair trade practice.

RULE 9.

The imitation or simulation of the trade-marks, trade names, labels, or brands of competitors, with the purpose or with the tendency and capacity or effect of misleading or deceiving purchasers, prospective purchasers, or the consuming public, is an unfair trade practice.

RULE 10.

Securing information from competitors concerning their businesses by false or misleading statements or representations or by false impersonation of one in authority and the wrongful use thereof to unduly hinder or stifle the competition of such competitors is an unfair trade practice.

RULE 11.

It is an unfair trade practice for any member of the industry to use the practice of shipping goods on consignment or pretended consignment for the purpose and with the effect of artificially clogging trade outlets and unduly restricting competitors' use of said trade outlets in getting their goods to consumers through regular channels of distribution, or with such purpose to entirely close said trade outlets to such competitors so as to substantially lessen competition or tend to create a monopoly or to unreasonably restrain trade: *Provided, however*, That nothing herein shall be construed or used as restricting or preventing consignment shipping or marketing of commodities in good faith and without artificial interference with competitors' use of the usual channels of distribution in such manner as thereby to suppress competition or restrain trade.

RULE 12.

Withholding from or inserting in invoices any statements or information by reason of which omission or insertion a false record is made, wholly or in part, of the transactions represented on the face of such invoices, with the purpose or effect of thereby misleading or deceiving purchasers, prospective purchasers, or the consuming public, is an unfair trade practice.

GROUP II*

RULE A. *Return of Merchandise—Expression of Industry.*

The practice, by members of the industry, of selling merchandise and later permitting the purchaser to return it for credit or refund of purchase price, without just cause, creates waste and loss, increases the cost of doing business, to the detriment of both the industry and the public, and is condemned by the industry, subject, however, to requirements and limitations set forth in the provisions of Rule 6 of Group I, herein.

RULE B.

Contracts are business obligations which should be performed in letter and in spirit. The repudiation of contracts by sellers on a rising market or by buyers on a declining market is condemned by the industry.

RULE C.

In the interest of consumer protection, the industry records itself as favoring, and recommends, the practice of members making fair and truthful disclosure, in their advertisements, labels, or other available means, of the fiber content of their garments.

RULE D.

The industry records its approval of distributing information covering delinquent and slow accounts insofar as it may be lawfully done.

Promulgated by the Federal Trade Commission December 31, 1937.

* See page VIII for headnote applicable to Group I Rules.

TRADE PRACTICE RULES

FOR THE

TOILET BRUSH MANUFACTURING INDUSTRY

PROMULGATED DECEMBER 31, 1937

STATEMENT BY THE COMMISSION

Trade practice rules for the Toilet Brush Manufacturing Industry, as herein set forth, are promulgated by the Federal Trade Commission under its trade practice conference procedure.

The products of the industry consist of toilet brushes, including clothes, hair, hand, tooth, bath, military, hat, nail, manicure, shampoo, and eyebrow brushes, not including shaving or lather brushes. The industry embraces all manufacturers of such toilet brushes. Such manufacturers, members of the industry, sell and distribute the brushes throughout the United States to dealers and other purchasers. The total dollar volume of sales of toilet brushes for the year 1935, the most recent figures available, is estimated at approximately \$11,000,000, or about 35 percent of the total volume of business for that year in brushes of all kinds.

In the course of the proceedings, proposed trade practice rules, as submitted by the industry for the Commission's approval, were made available to all interested or affected parties, affording them opportunity to present their views, suggestions, or objections, if any, and to be heard in respect thereto. Accordingly, public hearings were held by the Commission for this purpose. Thereafter, and upon further consideration of the entire matter, final Commission action was taken and rules, in the form appearing herein, were approved and promulgated by the Commission.

THE RULES

GROUP I*

RULE 1. *Misbranding.*

The false or deceptive marking or branding of products of the industry for the purpose or with the tendency, capacity, or effect of misleading or deceiving purchasers, prospective purchasers, or the consuming public with respect to the grade, quality, quantity, use, size, material, content, origin, preparation, manufacture, or distribution of such products, or in any other material respect, is an unfair trade practice.

* See page VIII for headnote applicable to Group I Rules.

RULE 2. *Misrepresentation or Concealment as to Foreign Handles or Blocks.*

(a) The passing off, selling, or offering for sale of tooth brushes, hair brushes, or other toilet brushes made from imported handles or blocks on which the identification mark of the country of origin has been omitted or has been obliterated or concealed in the fabrication of the finished article, which brushes have been marked, stamped, or branded in such manner as to mislead or deceive purchasers, prospective purchasers, or the consuming public into the erroneous belief that said brushes have been manufactured wholly within the United States, or that said brushes have been manufactured wholly from materials produced in the United States, is an unfair trade practice.

(b) In the case of tooth brushes, hair brushes, or other toilet brushes manufactured in the United States with handles or blocks made in and imported from a foreign country, nothing in these rules shall prohibit branding or marking the handles or blocks of such brushes, or the cartons thereof, with the words or letters "Brush Made in U. S. A." or words, letters, or phrases of like import, provided such mark or brand contain or be immediately accompanied by words, letters, or phrases which are of at least equal prominence and conspicuousness and which truthfully and unequivocally disclose the fact that such handles or blocks have been manufactured or produced in, or imported from, the foreign country wherein such handles or blocks have been manufactured or produced, such as, for example: "Handle from England," "Block from England," "Handle from France," "Block from France," "Handle from Japan," "Block from Japan," or branding or marking with words of like import.

RULE 3. *Deceptive Advertisements or Descriptions.*

Making, or causing to be made or published, directly or indirectly, any false, untrue, or deceptive statement or representation, by way of advertisement or otherwise, concerning the grade, quality, quantity, use, size, material, content, origin, preparation, manufacture, or distribution of any product of the industry, or in any other material respect, with the tendency, capacity, or effect of misleading or deceiving purchasers, prospective purchasers, or the consuming public, is an unfair trade practice.

RULE 4. *Misrepresentation as to Bristles.*

The false marking, branding, or labeling of tooth brushes, hair brushes, or other toilet brushes with the words "bristle" or "pure bristle" when such brushes are made in whole or in part of horse hair, fiber, or other adulterant and such fact is not disclosed, or the making of any false representations with respect to the terms "bristle"

or "pure bristle," through advertising or otherwise, with the tendency, capacity, or effect of misleading or deceiving purchasers, prospective purchasers, or the consuming public, is an unfair trade practice.

RULE 5. *Misrepresentation as to Kind of Wood in Handle or Back.*

The false marking, branding, labeling, or advertising of the handles or backs of tooth brushes, hair brushes, or other toilet brushes as containing or being composed of ebony, satinwood, or other costly wood or woods, when the handles or backs of such brushes are made from an imitation of the above wood or woods and such fact is not disclosed, with the tendency, capacity, or effect of misleading or deceiving purchasers, prospective purchasers, or the consuming public, is an unfair trade practice.

Promulgated by the Federal Trade Commission December 31, 1937.

TRADE PRACTICE RULES

FOR THE

METAL CLAD DOOR AND ACCESSORIES
MANUFACTURING INDUSTRY

PROMULGATED JANUARY 20, 1938

STATEMENT BY THE COMMISSION

Trade practice rules for the Metal Clad Door and Accessories Manufacturing Industry, as herein set forth, are promulgated by the Federal Trade Commission under its trade practice conference procedure.

The members of the industry are engaged in the manufacture, sale, and installation of metal-covered doors used chiefly in commercial buildings for fire-protection purposes. They also manufacture metal clad door frames and other accessories.

The total capital invested in the industry is estimated at \$2,000,000, and the annual sales volume at between \$8,000,000 and \$10,000,000.

In the course of the proceedings a general trade practice conference was held upon application of representatives of the industry on October 5, 1937. Thereafter, public hearing in respect to proposed rules was ordered by the Commission, upon notice to all interested or affected parties, whereby copies of the proposed rules were made available and all such parties were afforded opportunity to present to the Commission their views in respect to the proposed rules, including suggestions or objections, if any. Thereafter, and upon further consideration of the entire matter, final action was taken and the rules in the form appearing herein were approved by the Commission as to Group I and in respect to Group II were received by the Commission as expressions of the industry.

THE RULES

GROUP I*

RULE 1.

Directly or indirectly to give, or permit to be given, or offer to give, money or anything of value to agents, employees, or representatives of customers or prospective customers, or to agents, employees, or representatives of competitors' customers or prospective customers, without the knowledge of their employers or principals, as an inducement to influence their employers or principals to purchase or contract to purchase industry products from the maker of such gift or offer or

* See page VIII for headnote applicable to Group I Rules.

to influence such employers or principals to refrain from dealing or contracting to deal with competitors, is an unfair trade practice.

RULE 2.

Wilfully inducing or attempting to induce the breach of an existing contract or contracts between competitors and their customers or their suppliers by any false or deceptive means whatsoever, or wilfully interfering with or obstructing the performance of any such contractual duties or services by any such means, with the purpose and effect of unduly hampering, injuring, or prejudicing competitors in their businesses, is an unfair trade practice.

RULE 3.

Wilfully enticing away the employees of competitors, with the purpose and effect of unduly hampering, injuring, or embarrassing competitors in their businesses, is an unfair trade practice.

RULE 4.

It is an unfair trade practice for any member of the industry to make or publish or cause to be made or published, directly or indirectly, any false, misleading, or deceptive statement or representation, by way of advertisement, guarantee, warranty, adjustment policy, or otherwise, concerning the grade, quality, quantity, substance, use, character, nature, origin, size, manufacture, or distribution of any product of the industry, or concerning the life or service of such product, or in any other material respect.

RULE 5.

The false or deceptive marking or branding of products of the industry, with the tendency, capacity, or effect of misleading or deceiving purchasers, prospective purchasers, or the consuming public with respect to the grade, quality, quantity, use, size, material, content, origin, preparation, manufacture, or distribution of such products, or in any other material respect, is an unfair trade practice.

RULE 6.

The defamation of competitors by falsely imputing to them dishonorable conduct, inability to perform contracts, questionable credit standing, or by other false representations, or the false disparagement of the grade, quality, or manufacture of the products of competitors, or of their business methods, selling prices, values, credit terms, policies, or services, with the tendency, capacity, or effect of misleading or deceiving purchasers, prospective purchasers, or the consuming public, is an unfair trade practice.

RULE 7.

(a) *Prohibited Discriminatory Rebates, Refunds, Discounts, Credits, and Other Price Differentials.*—It is an unfair trade practice for any member of the industry engaged in commerce,¹ in the course of such commerce, to grant or allow, secretly or openly, directly or indirectly, any rebates, refunds, discounts, credits, or other price differentials, where such rebates, refunds, discounts, credits, or other price differentials effect a discrimination in price between different purchasers of goods of like grade and quality and where either or any of the purchases involved therein are in commerce¹ and where the effect thereof may be substantially to lessen competition or tend to create a monopoly in any line of commerce¹ or to injure, destroy, or prevent competition with any person who either grants or knowingly receives the benefit of such discrimination or with customers of either of them: *Provided, however—*

(1) That the goods involved in any such transaction are sold for use, consumption, or resale within any place under the jurisdiction of the United States;

(2) That nothing herein contained shall prevent differentials which make only due allowance for differences in the cost of manufacture, sale, or delivery resulting from the differing methods or quantities in which such commodities are to such purchasers sold or delivered;

(3) That nothing herein contained shall prevent persons engaged in selling goods, wares, or merchandise in commerce¹ from selecting their own customers in bona fide transactions and not in restraint of trade;

(4) That nothing herein contained shall prevent price changes from time to time where made in response to changing conditions affecting either (a) the market for the goods concerned, or (b) the marketability of the goods, such as, but not limited to, actual or imminent deterioration of perishable goods, obsolescence of seasonal goods, distress sales under court process, or sales in good faith in discontinuance of business in the goods concerned.

(b) *Prohibited Brokerage and Commissions.*—It is an unfair trade practice for any member of the industry engaged in commerce,¹ in the course of such commerce, to pay or grant, or to receive or accept, anything of value as a commission, brokerage, or other compensation, or any allowance or discount in lieu thereof, except for services rendered in connection with the sale or purchase of goods, wares, or merchandise, either to the other party to such transaction or to an agent, representative, or other intermediary therein where such intermediary

¹ See footnote, p. 460.

is acting in fact for or in behalf, or is subject to the direct or indirect control, of any party to such transaction other than the person by whom such compensation is so granted or paid.

(c) *Prohibited Advertising or Promotional Allowances, Etc.*—It is an unfair trade practice for any member of the industry engaged in commerce¹ to pay or contract for the payment of advertising or promotional allowances or any other thing of value to or for the benefit of a customer of such member in the course of such commerce as compensation or in consideration for any services or facilities furnished by or through such customer in connection with the processing, handling, sale, or offering for sale of any products or commodities manufactured, sold, or offered for sale by such member, unless such payment or consideration is available on proportionally equal terms to all other customers competing in the distribution of such products or commodities.

(d) *Prohibited Discriminatory Services or Facilities.*—It is an unfair trade practice for any member of the industry engaged in commerce¹ to discriminate in favor of one purchaser against another purchaser or purchasers of a commodity bought for resale, with or without processing, by contracting to furnish or by furnishing, or by contributing to the furnishing of, any services or facilities connected with the processing, handling, sale, or offering for sale of such commodity so purchased upon terms not accorded to all purchasers on proportionally equal terms.

(e) *Illegal Price Discrimination.*—It is an unfair trade practice for any member of the industry or other person engaged in commerce,¹ in the course of such commerce, to discriminate in price in any other respect contrary to Section 2 of the Clayton Act as amended by the Act of Congress approved June 19, 1936 (Public, No. 692, 74th Congress), or knowingly to induce or receive a discrimination in price which is prohibited by such section as amended.

RULE 8.

The practice of selling goods below the seller's cost, with the intent and with the effect of injuring a competitor and where the effect may be to substantially lessen competition or tend to create a monopoly or unreasonably restrain trade, is an unfair trade practice; all elements recognized by good accounting practice as proper elements of such cost shall be included in determining cost under this rule.

RULE 9.

Representing, through advertising or otherwise, that any products of the industry conform to a standard recognized in or applicable to the industry when such is not the fact, with the tendency, capacity,

¹ See footnote, p. 460.

or effect of misleading or deceiving purchasers, prospective purchasers, or the consuming public, is an unfair trade practice.

RULE 10.

The sale or offering for sale of any product of the industry by any false or deceptive means or device which has the tendency, capacity, or effect of misleading or deceiving purchasers, prospective purchasers, or the consuming public as to the grade, quality, quantity, substance, use, character, nature, origin, size, or preparation of such product, or in any other material respect, is an unfair trade practice.

RULE 11.

The practice of using or substituting any product of the industry inferior in grade or quality to, less in quantity than, or of a different design^{*} or type from, that specified by the purchaser, without the consent of said purchaser to such use or substitution and with the tendency, capacity, or effect of misleading or deceiving purchasers, prospective purchasers, or the consuming public, is an unfair trade practice.

GROUP II*

RULE A.

Contracts are business obligations which should be performed in letter and in spirit. The repudiation of contracts by sellers on a rising market or by buyers on a declining market is condemned by the industry.

RULE B.

The industry condemns fake or fictitious bids made for the purpose of deceiving competitors and securing undue advantage. If plans and specifications are changed and new bids called for after the original bids have been submitted and opened, the same fairness should obtain as with the original bid.

RULE C.

In cases of competitive bidding, the practice of receiving or making so-called "blind bids," which discount the lowest competitive bid regardless of the amount, tends to destroy competitive bidding, and is condemned by the industry.

Promulgated by the Federal Trade Commission January 20, 1938.

^{*} See page VIII for headnote applicable to Group II Rules.

TRADE PRACTICE RULES

FOR THE

WHOLESALE JEWELRY INDUSTRY

PROMULGATED MARCH 18, 1938

STATEMENT BY THE COMMISSION

Trade practice rules for the Wholesale Jewelry Industry, as herein set forth, are promulgated by the Federal Trade Commission under its trade practice conference procedure.

The application for approval by the Commission of trade practice rules for this industry was made by the National Wholesale Jewelers' Association, which is said to represent over 70 percent of the industry in point of annual sales volume.

The members of the industry are engaged in wholesaling various types of jewelry. Their annual sales volume is estimated at about \$200,000,000, and their capital investment at approximately \$90,000,000. The industry, it is said, employs between 3,500 and 4,000 persons.

In the course of the proceedings, rules as proposed for the industry, with certain modifications, were tentatively acted upon by the Commission and made available to all interested or affected parties, affording them opportunity to present their views, suggestions, or objections, if any, and to be heard in respect thereto. Accordingly, public hearings were held by the Commission for this purpose. Thereafter, and upon further consideration of the entire matter, final Commission action was taken and rules, in the form appearing herein, were approved and promulgated by the Commission.

These rules supersede the trade practice rules promulgated by the Commission for the Jewelry Industry under date of July 10, 1931.

THE RULES

GROUP I*

RULE 1. *Failure to Disclose that Watch is Rebuilt or Secondhand.*

(a) Selling, offering for sale, advertising, branding, labeling, or otherwise describing any watch as rebuilt when such watch has not in fact been rebuilt at a watch factory or other place properly equipped and used for this purpose, with the tendency and capacity or effect of misleading or deceiving purchasers, prospective purchasers, or the consuming public, is an unfair trade practice.

^{*} See page VIII for headnote applicable to Group I Rules.

(b) In the sale or offering for sale of rebuilt or secondhand watches or watches containing rebuilt or secondhand movements, the failure to attach a tag to each such watch at the time of sale and delivery stating that the watch is rebuilt or secondhand is an unfair trade practice.

RULE 2. Misuse of Word "Perfect" in Describing Gem Stones.

It is an unfair trade practice to use the word "perfect," or any other word, expression, or representation of similar import, as descriptive of any diamond, ruby, sapphire, emerald, or other gem stone which discloses flaws, cracks, carbon spots, clouds, or other blemishes or imperfections of any sort when examined by a trained eye under a diamond eye loupe or other magnifier of not less than ten power, with the tendency and capacity or effect of misleading or deceiving purchasers, prospective purchasers, or the consuming public.

RULE 3. Misuse of terms "Perfect Cut," "Perfectly Cut," "Eye Perfect," "Commercially White," "Commercially Perfect," etc.

It is an unfair trade practice to use the terms "perfect cut," "perfectly cut," "eye perfect," "commercially perfect," or "commercially white," or any other terms, expressions, or representations of similar import, in advertising, labeling, representing, or describing any diamond, when such terms are so used for the purpose or with the capacity and tendency or effect of misleading or deceiving purchasers, prospective purchasers, or the consuming public.

RULE 4. Misuse of Words "Pearl," "Diamond," "Ruby," "Sapphire," "Emerald," "Topaz," etc.

It is an unfair trade practice to use the word "pearl," or the word "diamond," "ruby," "sapphire," "emerald," "topaz," or the name of any gem stone, in such manner as to mislead or deceive purchasers, prospective purchasers, or the consuming public into the erroneous belief that the product is a genuine pearl, diamond, ruby, sapphire, emerald, topaz, or other gem stone.

DEFINITIONS:

Pearls.—Pearls are lustrous concretions, consisting essentially of alternating concentric layers of carbonate of lime and organic material found in the shells of certain mollusks, the result of an abnormal secretory process caused by an irritation of the mantle of the mollusk consequent on the natural intrusion into the shell of some foreign body.

Diamond.—A mineral consisting essentially of pure carbon crystallized in the isometric system, either colorless or colored. Its hardness is 10 and its specific gravity approximately 3.52.

Ruby.—The name "ruby" is given to the transparent to translucent variety of the mineral corundum. Its color is red with only limited traces of other tints or hues. The color is due to the presence of minute quantities of metallic oxides in the alumina. Its hardness is about 9 and its

specific gravity varies from 3.94 to 4.10. The variety of ruby which exhibits a six-rayed star is known as the "Star Ruby."

Sapphire.—The name "sapphire" is given to the transparent to translucent blue, yellow, green, orange, purple, pink, or other colored or colorless varieties of the mineral corundum, except red, or red with only limited traces of other tints or hues. The color is due to the presence of minute quantities of metallic oxides in the alumina. Its hardness is about 9 and its specific gravity varies from 3.94 to 4.10. The translucent variety of corundum of any of these colors which exhibits a six-rayed star is known as the "Star Sapphire."

Emerald.—A deep green to light grass green transparent to translucent variety of the mineral beryl which crystallized in the hexagonal system. Its color is due to the presence of chromium. Its hardness ranges from $7\frac{1}{2}$ to 8, and its specific gravity from 2.67 to 2.75. The still lighter green varieties of beryl are correctly known as either green beryl or aquamarine and should not be confused with emerald.

Topaz.—A mineral consisting essentially of aluminum fluosilicate crystallized in the orthorhombic system. Its characteristic color is yellow, varying from canary to deep orange, but it is also white, greenish, bluish, pink, rose, red, etc. Its hardness is 8 and its specific gravity varies from about 3.4 to 3.6. This mineral, known in the trade as precious topaz, should not be confused with a yellow to brown variety of quartz (silica) generally known as topaz quartz, citrine quartz, or citrine.

RULE 5. Misuse of Words "Real," "Genuine," "Natural," etc.

It is an unfair trade practice to use the word "real," "genuine," or "natural," or any other word, expression, or representation of similar import, in any way as descriptive of any article or articles which are manufactured or produced synthetically or artificially, or which are artificially cultured or cultivated, or which are a simulation or imitation of or substitute for any precious or semi-precious stones, or pearls, with the tendency and capacity or effect of misleading or deceiving purchasers, prospective purchasers, or the consuming public.

RULE 6. Misuse of Terms "Blue White," etc.

(a) It is an unfair trade practice to use the term "blue white," or any other term, expression, or representation of similar import, as descriptive of any diamond which shows any color or any trace of any color other than blue or bluish, with the tendency and capacity or effect of misleading or deceiving purchasers, prospective purchasers, or the consuming public.

(b) The practice of tinting a diamond a bluish white or any other color for the purpose or with the tendency and capacity or effect of thereby misleading or deceiving purchasers, prospective purchasers, or the consuming public as to the natural color, tint, or condition of such diamond, is an unfair trade practice.

RULE 7. Misrepresentation as to Character of Business.

Representing, in connection with the sale or distribution of any article or product of the industry, that the seller or distributor is a

manufacturer, wholesaler, or importer of said article or product of the industry when such is not true in fact, or when such concern is not engaged in the manufacturing, wholesaling, or importing business, is an unfair trade practice.

RULE 8. Misrepresentation of Products.

Making, or causing to be made or published, any false, misleading, or deceptive statement or representation, by way of advertisement or otherwise, concerning the grade, quality, quantity, use, size, material, content, origin, nature, substance, preparation, manufacture, or distribution of any industry products, or in any other material respect, is an unfair trade practice.

RULE 9. Misbranding.

The false or deceptive marking or branding of products of the industry with respect to the grade, quality, quantity, use, size, material, content, origin, nature, substance, preparation, manufacture, or distribution of such products, or in any other material respect, is an unfair trade practice.

RULE 10. Fictitious Price Tags.

It is an unfair trade practice for any member of the industry, directly or indirectly, to use, or to supply to dealers, or to aid or assist in the use of, price tags which are knowingly false; fictitious, or exaggerated, or which such member has reason to believe are intended to be used or will be used by dealers or salesmen for the purpose of misleading or deceiving purchasers, prospective purchasers, or the consuming public in respect to price, value, or in any other material respect.

RULE 11. Misuse of Term "Synthetic."

Applying the term "synthetic" to gem stones other than those produced by artificial means and having essentially the same physical, chemical, and optical properties as the genuine or natural gem stones which such synthetic products simulate, with the tendency and capacity or effect of misleading or deceiving purchasers, prospective purchasers, or the consuming public, is an unfair trade practice.

RULE 12. False Invoicing.

Withholding from or inserting in invoices any statements or information by reason of which omission or insertion a false record is made, wholly or in part, of the transactions represented on the face of such invoices, with the purpose or effect of thereby misleading or deceiving purchasers, prospective purchasers, or the consuming public, is an unfair trade practice.

RULE 13.

(a) *Prohibited Discriminatory Rebates, Refunds, Discounts, Cred-*

its, and Other Price Differentials.—It is an unfair trade practice for any member of the industry engaged in commerce,¹ in the course of such commerce, to grant or allow, secretly or openly, directly or indirectly, any rebate, refund, discount, credit, or other price differential, where such rebate, refund, discount, credit, or other price differential effects a discrimination in price between different purchasers of goods of like grade and quality and where either or any of the purchases involved therein are in commerce¹ and where the effect thereof may be substantially to lessen competition or tend to create a monopoly in any line of commerce¹ or to injure, destroy, or prevent competition with any person who either grants or knowingly receives the benefit of such discrimination or with customers of either of them: *Provided, however—*

(1) That the goods involved in any such transaction are sold for use, consumption, or resale within any place under the jurisdiction of the United States;

(2) That nothing herein contained shall prevent differentials which make only due allowance for differences in the cost of manufacture, sale, or delivery resulting from the differing methods or quantities in which such commodities are to such purchasers sold or delivered;

(3) That nothing herein contained shall prevent persons engaged in selling goods, wares, or merchandise in commerce¹ from selecting their own customers in bona fide transactions and not in restraint of trade;

(4) That nothing herein contained shall prevent price changes from time to time where made in response to changing conditions affecting either (a) the market for the goods concerned, or (b) the marketability of the goods, such as, but not limited to, actual or imminent deterioration of perishable goods, obsolescence of seasonal goods, distress sales under court process, or sales in good faith in discontinuance of business in the goods concerned.

(b) *Prohibited Brokerage and Commissions.*—It is an unfair trade practice for any member of the industry engaged in commerce,¹ in the course of such commerce, to pay or grant, or to receive or accept, anything of value as a commission, brokerage, or other compensation, or any allowance or discount in lieu thereof, except for services rendered in connection with the sale or purchase of goods, wares, or merchandise, either to the other party to such transaction or to an agent, representative, or other intermediary therein where such intermediary is acting in fact for or in behalf, or is subject to the direct or indirect control, of any party to such transaction other than the person by whom such compensation is so granted or paid.

¹ See footnote, p. 460.

(c) *Prohibited Advertising or Promotional Allowances, Etc.*—It is an unfair trade practice for any member of the industry engaged in commerce¹ to pay or contract for the payment of advertising or promotional allowances or any other thing of value to or for the benefit of a customer of such member in the course of such commerce as compensation or in consideration for any services or facilities furnished by or through such customer in connection with the processing, handling, sale, or offering for sale of any products or commodities manufactured, sold, or offered for sale by such member, unless such payment or consideration is available on proportionally equal terms to all other customers competing in the distribution of such products or commodities.

(d) *Prohibited Discriminatory Services or Facilities.*—It is an unfair trade practice for any member of the industry engaged in commerce¹ to discriminate in favor of one purchaser against another purchaser or purchasers of a commodity bought for resale, with or without processing, by contracting to furnish or by furnishing, or by contributing to the furnishing of, any services or facilities connected with the processing, handling, sale, or offering for sale of such commodity so purchased upon terms not accorded to all purchasers on proportionally equal terms.

(e) *Illegal Price Discrimination.*—It is an unfair trade practice for any member of the industry or other person engaged in commerce,¹ in the course of such commerce, to discriminate in price in any other respect contrary to Section 2 of the Clayton Act as amended by the Act of Congress approved June 19, 1936 (Public, No. 692, 74th Congress), or knowingly to induce or receive a discrimination in price which is prohibited by such section as amended.

Promulgated by the Federal Trade Commission March 18, 1938.

¹ See footnote, p. 460.

TRADE PRACTICE RULES

FOR THE

CARBON DIOXIDE MANUFACTURING INDUSTRY

PROMULGATED MARCH 19, 1938

STATEMENT BY THE COMMISSION

Trade practice rules for the Carbon Dioxide Manufacturing Industry, as herein set forth, are promulgated by the Federal Trade Commission under its trade practice conference procedure.

In the course of the proceedings a general trade practice conference for the industry was held. Thereafter the proposed rules were made available upon public notice to all interested or affected parties, affording them opportunity to present their views to the Commission, including suggestions or objections, if any. Upon further consideration of the entire matter, final Commission action was taken and the rules in the form appearing herein were approved by the Commission as to Group I, and in respect to Group II were received by the Commission as expressions of the industry.

The products of the industry consist of carbon dioxide in its several forms and uses. When produced for sale as liquid carbon dioxide it is stored, sold, and distributed under pressure in steel cylinders, which when empty are returned by the consumer of the product to the producer or distributor for refilling. Solid carbon dioxide, known as dry ice, is marketed for use as a refrigerant and also for use in converters or liquefiers as a carbonating agent. Both the liquid and the solid carbon dioxide when used for carbonating purposes are utilized in the form of carbonic gas.

The rules as promulgated cover the sale and distribution of carbon dioxide in all its forms, and regardless of the uses to which it is or may be put.

Manufacturers, members of the industry, sell and distribute such carbon dioxide products throughout various parts of the country to wholesale and retail dealers, bottlers, ice cream manufacturers, beverage dispensers, and others. Total invested capital of the manufacturers approximates \$25,000,000, and their annual sales about \$10,000,000.

THE RULES

GROUP I*

RULE 1.

Wilfully inducing or attempting to induce, by any false or decep-

* See page VIII for headnote applicable to Group I Rules.

tive means whatsoever, the breach of any lawful contract or contracts existing between competitors and their customers or their suppliers, or wilfully interfering with or obstructing the performance of any such contractual duties or services by any such means, with the purpose and effect of unduly hampering, injuring, or prejudicing competitors in their businesses, is an unfair trade practice.

RULE 2.

Securing information from competitors concerning their businesses by false or misleading statements or representations or by false impersonation of one in authority and the wrongful use thereof to unduly hinder or stifle the competition of such competitors is an unfair trade practice.

RULE 3.

The defamation of competitors by falsely imputing to them dishonorable conduct, inability to perform contracts, questionable credit standing, or by other false representations, or the false disparagement of the grade, quality, or manufacture of the products of competitors, or of their business methods, selling prices, values, credit terms, policies, or services, or conditions of employment, with the tendency, capacity, or effect of misleading or deceiving purchasers, prospective purchasers, or the consuming public, is an unfair trade practice.

RULE 4.

It is an unfair trade practice for any member of the industry, by means of any monopolistic practices or through combination, conspiracy, coercion, boycott, threats, or any other unlawful means, directly or indirectly, to interfere with a competitor's right to purchase his products and supplies from whomsoever he chooses, or to sell the same to whomsoever he chooses.

RULE 5.

The practice of imitating or causing to be imitated, or directly or indirectly promoting the imitation of, the trade-marks, trade names, or other exclusively owned symbols or marks of identification of competitors, having the capacity, tendency, or effect of misleading or deceiving purchasers, prospective purchasers, or the consuming public, is an unfair trade practice.

RULE 6.

The false or deceptive marking or branding of products of the industry, with respect to the grade, quality, quantity, use, size, material, content, origin, preparation, manufacture, or distribution of such products, or in any other material respect, is an unfair trade practice.

RULE 7.

The unauthorized use of the carbon dioxide containers of a competitor with the purpose and effect of thereby misleading or deceiving purchasers, prospective purchasers, or the consuming public, or with the purpose and effect of unduly hampering, injuring, or prejudicing such competitor in his business, is an unfair trade practice.

(NOTE.—Owing to the responsibility of the owners of containers involving compliance with Interstate Commerce Commission Specifications 3 or 3-A requiring periodic testing of such containers, the industry recommends that containers which bear a competitor's identification marks should not be used without owner's permission evidenced by bill of sale, lease, or other instrument, in writing.)

RULE 8.

Making, or causing to be made or published, any false, misleading, or deceptive statement or representation, by way of advertisement or otherwise, concerning the grade, quality, quantity, substance, character, use, size, material, content, nature, origin, preparation, manufacture, or distribution of any industry product, or in any other material respect, is an unfair trade practice.

RULE 9.

(a) *Prohibited Discriminatory Rebates, Refunds, Discounts, Credits, and Other Price Differentials.*—It is an unfair trade practice for any member of the industry engaged in commerce,¹ in the course of such commerce, to grant or allow, secretly or openly, directly or indirectly, any rebate, refund, discount, credit, or other price differential, where such rebate, refund, discount, credit, or other price differential effects a discrimination in price between different purchasers of goods of like grade and quality and where either or any of the purchases involved therein are in commerce¹ and where the effect thereof may be substantially to lessen competition or tend to create a monopoly in any line of commerce¹ or to injure, destroy, or prevent competition with any person who either grants or knowingly receives the benefit of such discrimination or with customers of either of them: *Provided, however—*

(1) That the goods involved in any such transaction are sold for use, consumption, or resale within any place under the jurisdiction of the United States;

(2) That nothing herein contained shall prevent differentials which make only due allowance for differences in the cost of manufacture, sale, or delivery resulting from the differing methods or quantities in which such commodities are to such purchasers sold or delivered;

¹ See footnote, p. 460.

(3) That nothing herein contained shall prevent persons engaged in selling goods, wares, or merchandise in commerce¹ from selecting their own customers in bona fide transactions and not in restraint of trade;

(4) That nothing herein contained shall prevent price changes from time to time where made in response to changing conditions affecting either (a) the market for the goods concerned, or (b) the marketability of the goods, such as, but not limited to, actual or imminent deterioration of perishable goods, obsolescence of seasonal goods, distress sales under court process, or sales in good faith in discontinuance of business in the goods concerned.

(b) *Prohibited Brokerage and Commissions.*—It is an unfair trade practice for any member of the industry engaged in commerce,¹ in the course of such commerce, to pay or grant, or to receive or accept, anything of value as a commission, brokerage, or other compensation, or any allowance or discount in lieu thereof, except for services rendered in connection with the sale or purchase of goods, wares, or merchandise, either to the other party to such transaction or to an agent, representative, or other intermediary therein where such intermediary is acting in fact for or in behalf, or is subject to the direct or indirect control, of any party to such transaction other than the person by whom such compensation is so granted or paid.

(c) *Prohibited Advertising or Promotional Allowances, Etc.*—It is an unfair trade practice for any member of the industry engaged in commerce¹ to pay or contract for the payment of advertising or promotional allowances or any other thing of value to or for the benefit of a customer of such member in the course of such commerce as compensation or in consideration for any services or facilities furnished by or through such customer in connection with the processing, handling, sale, or offering for sale of any products or commodities manufactured, sold, or offered for sale by such member, unless such payment or consideration is available on proportionally equal terms to all other customers competing in the distribution of such products or commodities.

(d) *Prohibited Discriminatory Services or Facilities.*—It is an unfair trade practice for any member of the industry engaged in commerce¹ to discriminate in favor of one purchaser against another purchaser or purchasers of a commodity bought for resale, with or without processing, by contracting to furnish or by furnishing, or by contributing to the furnishing of, any services or facilities connected with the processing, handling, sale, or offering for sale of such commodity so purchased upon terms not accorded to all purchasers on proportionally equal terms.

¹ See footnote, p. 460.

(e) *Illegal Price Discrimination.*—It is an unfair trade practice for any member of the industry or other person engaged in commerce,¹ in the course of such commerce, to discriminate in price in any other respect contrary to Section 2 of the Clayton Act as amended by the Act of Congress approved June 19, 1936 (Public, No. 692, 74th Congress), or knowingly to induce or receive a discrimination in price which is prohibited by such section as amended.

RULE 10.

The sale or offering for sale of any product of the industry by any false or deceptive means or device which has the tendency and capacity or effect of misleading or deceiving purchasers, prospective purchasers, or the consuming public as to the quality, quantity, substance, or size of such product, or in any other material respect, is an unfair trade practice.

RULE 11.

It is an unfair trade practice for any member of the industry to use the practice of shipping goods on consignment or pretended consignment for the purpose and with the effect of artificially clogging trade outlets and unduly restricting competitors' use of said trade outlets in getting their goods to consumers through regular channels of distribution, or with such purpose to entirely close said trade outlets to such competitors so as to substantially lessen competition or tend to create a monopoly or to unreasonably restrain trade: *Provided, however,* That nothing herein shall be construed or used as restricting or preventing consignment shipping or marketing of commodities in good faith and without artificial interference with competitors' use of the usual channels of distribution in such manner as thereby to suppress competition or restrain trade.

RULE 12.

The use of the word "free" where not properly or fairly qualified when the article is in fact not free, with the tendency or capacity to mislead or deceive purchasers, prospective purchasers, or the consuming public, is an unfair trade practice.

RULE 13.

Directly or indirectly to give, or permit to be given, or offer to give, money or anything of value to agents, employees, or representatives of customers or prospective customers, or to agents, employees, or representatives of competitors' customers or prospective customers, without the knowledge of their employers or principals, as an inducement to influence their employers or principals to purchase or contract to purchase industry products from the maker of such gift or offer

¹ See footnote, p. 460.

or to influence such employers or principals to refrain from dealing or contracting to deal with competitors, is an unfair trade practice.

RULE 14.

The offering or giving of prizes, premiums, or gifts in connection with the sale of products, or as an inducement thereto, by any scheme which involves lottery, misrepresentation, or fraud, is an unfair trade practice.

RULE 15.

The practice of coercing the purchase of one or more products as a prerequisite to the purchase of one or more other products, where the effect may be to substantially lessen competition or tend to create a monopoly or to unreasonably restrain trade, is an unfair trade practice.

RULE 16.

Withholding from or inserting in invoices, bills of lading, delivery receipts, or other documents of title any statements or information by reason of which omission or insertion a false record is made, wholly or in part, of the transactions represented on the face of such invoices, bills of lading, delivery receipts, or other documents of title, with the purpose or effect of thereby misleading or deceiving purchasers, prospective purchasers, or the consuming public, is an unfair trade practice.

RULE 17.

The practice of selling goods below the seller's cost, with the intent and with the effect of injuring a competitor and where the effect may be to substantially lessen competition or tend to create a monopoly or unreasonably restrain trade, is an unfair trade practice; all elements recognized by good accounting practice as proper elements of such cost shall be included in determining cost under this rule.

RULE 18.

It is an unfair trade practice for any person, firm, partnership, corporation, or association to enter into or take part in, directly or indirectly, any agreement, understanding, combination, or conspiracy with one or more persons, firms, partnerships, corporations, or associations to fix, maintain, or enhance prices, or to suppress competition in respect of any product or products of the industry or other products, or to fix, maintain, or enhance prices or suppress competition by any other unlawful means.

RULE 19.

For any member of the industry knowingly to aid or abet another member, or any other person, firm, or corporation, in the use of unfair trade practices is an unfair trade practice.

GROUP II*

RULE A.

The industry approves the practice of handling business disputes between members of the industry and their customers in a fair and reasonable manner, coupled with a spirit of moderation and good will, and every effort should be made by the disputants themselves to compose their differences. If unable to do so they should, if possible, submit these disputes to arbitration.

RULE B.

Contracts are business obligations which should be performed in letter and in spirit. The repudiation of contracts by sellers on a rising market or by buyers on a declining market is condemned by the industry.

RULE C.

The practice, by members of the industry, of selling merchandise and later permitting the purchaser to return it for credit or refund of purchase price, without good reason, creates waste and loss, increases the cost of doing business, to the detriment of both the industry and the public, and is condemned by the industry.

RULE D.

Where products of the industry are sold at wholesale and retail in the same establishment, the failure on the part of such member correctly to differentiate between or identify the two types of transactions, where the result may be to create confusion and deception as to the character of the transaction in the minds of purchasers or prospective purchasers, is condemned by the industry.

RULE E.

The use of buying power to force uneconomic or unjust terms of sale upon sellers, and the use of selling power to force uneconomic or unjust terms of sale upon buyers, are condemned by the industry.

RULE F.

In the judgment of the industry the practice of filling or using, for the distribution of liquid carbon dioxide, cylinders or containers which do not meet the requirements of Interstate Commerce Commission Specifications 3 or 3-A, and the practice of using converters or liquefiers which do not conform to the safety regulations of the locality in which they are used, may be dangerous to life and property, and such practices are therefore condemned by the industry. In localities in which no official applicable safety regulations are in effect it is recommended as a proper practice to follow in the interest of safety

* See page VIII for headnote applicable to Group II Rules.

that converters or liquefiers used be such as have been manufactured or constructed to meet the requirements of the Unfired Pressure Vessel Code of the American Society of Mechanical Engineers (A. S. M. E.) in effect at the time of such manufacture or construction, or which have otherwise been manufactured or constructed in accordance with adequate safety requirements. The use of converters or liquefiers is not prohibited or condemned by this rule, but safety precautions are deemed necessary and desirable in the interest of the public and for the welfare of the industry and are therefore recommended.

RULE G.

The industry records its approval of the distribution among members of the industry of information covering delinquent and slow return of cylinder accounts, as well as delinquent and slow credit accounts, insofar as such may be lawfully done.

RULE H.

To promote a business practice fair to both buyer and seller and to avoid unnecessary claims for evaporation during transportation, the industry recommends that buyers and sellers at the time of sale of carbon dioxide in solid form agree upon the place at which delivery should be made and weight taken.

Promulgated by the Federal Trade Commission March 19, 1938.

TRADE PRACTICE RULES

FOR THE

FUR INDUSTRY

PROMULGATED JUNE 17, 1938

STATEMENT BY THE COMMISSION

Trade practice rules for the Fur Industry, as herein set forth, are promulgated by the Federal Trade Commission under its trade practice conference procedure.

The Fur Industry embraces all those who sell, import, or process raw furs; those who manufacture garments made wholly or in part of fur; and those otherwise engaged in marketing or distributing raw furs or fur garments.

The Commission is advised that there are about 10,000 stores, including department stores, in the United States annually selling furs of a value of approximately \$150,000,000. As an indication of the extent of the industry, it is reported that there are about 200,000 silver fox pelts produced annually on the fur farms of the United States; and that in a recent year there were imported over 32,000,000 pounds of rabbit pelts; over 8,000,000 lamb, kid, sheep, and goat pelts; nearly 2,000,000 weasel pelts, and approximately 800,000 fox pelts.

In the course of the proceedings, a trade practice conference for the industry was held in New York City for the purpose of revising and supplementing the rules previously promulgated for the industry. Thereafter the proposed rules, with some modifications, were tentatively acted upon and made public by the Commission, affording all interested or affected parties opportunity to present their views, suggestions, or objections, if any, and to be heard in respect to the rules. Accordingly, a public hearing was held by the Commission for this purpose. Upon further consideration of the entire matter, final Commission action was taken and the rules in the form appearing herein were approved by the Commission as to Group I, and in respect to Group II were received by the Commission as expressions of the industry.

The rules herein supersede the rules promulgated by the Commission for the Fur Industry under date of March 7, 1928.

THE RULES

GROUP I*

RULE 1. *Misrepresentation of Products.*

(a) Making, or causing to be made or published, directly or indi-

* See page VIII for headnote applicable to Group I Rules.

rectly, through advertisement, pictorial representation, invoice, label, tag, or otherwise, any false, misleading, or deceptive statement or representation concerning the grade, quality, substance, character, material, name, nature, or zoological origin of any furs or fur products, or in any other material respect, is an unfair trade practice.

(b) It is an unfair trade practice to use, in advertisements or on labels, tags, brands, or otherwise, any description, designation, or representation of any fur which deceptively conceals the true name or nature of the fur with the tendency and capacity or effect of misleading or deceiving purchasers, prospective purchasers, or the consuming public.

(NOTE.—In order properly to describe a fur, the correct name of the fur must be the last word of the description, and if any dye or blend is used simulating another fur, the word "dyed" or "blended" must be inserted between the name signifying the fur that is simulated and the true name of the fur, as, for example, "Seal-dyed Muskrat.")

RULE 2. *Fictitious Animal Designations.*

It is an unfair trade practice to use, falsely or deceptively, in advertisements, labels, tags, brands, or other representations of furs, any trade name, coined name, or other name or words descriptive of the fur as being the fur of an animal which is in fact nonexistent.

RULE 3. *Passing off Cross-breeds as True Breeds.*

(a) In the case of fur which simulates a certain true species or breed of animal, it is an unfair trade practice, in advertising, branding, labeling, or otherwise representing such fur, not to make in connection therewith full and nondeceptive disclosure of the fact that such fur has been obtained from an animal which is of a different species or is a cross-breed or other than a true breed.

(b) Advertising, offering for sale, selling, branding, or otherwise representing furs as the product of a true species or breed of animals, unless such fur in fact has been obtained from a true species or breed of animals, is an unfair trade practice.

RULE 4. *Deceptive Use of Trade or Corporate Names, or Trade-marks.*

The use of any trade name, corporate name, trade-mark, or other trade designation in a manner which is calculated to or does mislead or deceive purchasers, prospective purchasers, or the consuming public as to the character, name, nature, or geographical or zoological origin of any fur or fur product or product made partly of fur, or in any other material respect, is an unfair trade practice.

RULE 5. *Misrepresentation of Geographical Origin of Furs.*

Making, or causing to be made or published, directly or indirectly, through advertisements, or on labels or tags, or otherwise, in connec-

tion with the sale or offering for sale of furs or fur garments, or garments made partly of fur, any false, misleading, or deceptive statement as to the geographical origin of the animal from which the peltry has been obtained, is an unfair trade practice.

(NOTE.—Nothing in these rules shall prohibit the use of the designation "Persian Lamb" to describe one of the Karakul breed, a fat-tailed sheep with hair in regular curls lying close to the pelt; nor shall anything in these rules prohibit the use of the designation "Broadtail" as applied to baby lamb, the offspring of this breed of Karakul sheep, not including in either case, however, Krimmer or other cross-breeds of Karakul sheep, or other types of Karakul sheep, such as caracul.)

RULE 6. *Passing Off Domestic Furs as Imported Furs.*

Selling, or offering for sale, advertising, describing, branding, labeling, or otherwise representing any fur or fur product as imported when such is not the fact, is an unfair trade practice.

RULE 7. *Failure to Disclose Tipping, Blending, Pointing, or Dyeing of Furs.*

It is an unfair trade practice to fail to disclose in advertisements, bills of sale, or invoices, or on labels, tags, or otherwise, the fact that furs, fur garments, or the fur trimming on garments made partly of fur, have been tipped, blended, or pointed, or have been dyed to simulate other kinds or grades of fur, with the tendency and capacity or effect of misleading or deceiving purchasers, prospective purchasers, or the consuming public.

RULE 8. *Used, Worn, or Secondhand Garments—Failure to Disclose.*

It is an unfair trade practice to sell or offer for sale used or worn fur garments, including those which have been renovated or rebuilt, unless the fact is clearly indicated, in advertising or on labels or tags, that such garments are used, worn, or secondhand, or have been made over.

RULE 9. *Failure to Disclose that Garments are Made of Pieces, Tails, Paws, etc.*

The selling or offering for sale, through advertisement or otherwise, of fur-trimmed garments the fur of which is composed of pieces and not of full skins, or of fur garments made in whole or in part of pieces, tails, paws, throats, heads, or scraps, or of plates or mats composed of pieces and not of full skins, without fully disclosing such fact, and with the tendency and capacity or effect of misleading or deceiving purchasers, prospective purchasers, or the consuming public, is an unfair trade practice.

RULE 10. *Misrepresentation as to Character of Business.*

For any person, firm, or corporation to hold himself or itself out to the public, by means of misrepresentation as to price or otherwise,

as a trapper, custom furrier, dyer, dresser, fur farmer, wholesaler, jobber, or a manufacturer of fur garments, when such is not the fact, or in any other manner to misrepresent the character of his or its business, is an unfair trade practice.

RULE 11. Misuse of Word "Genuine."

It is an unfair trade practice to use the word "genuine" to describe a fur which has been processed or dyed to imitate the fur of an animal known by another name in commerce and in zoology.

For example, the following should not be used:

Genuine Mink Marmot

Genuine Northern Seal

RULE 12. Asterisk or Dagger References.

In the case where any explanatory statement or representation in advertisements, labels, tags, brands, or descriptions is necessary to avoid the probability of deception, misunderstanding, or misrepresentation, it is an unfair trade practice to omit such explanatory statement or representation, or to place the same, by the use of asterisk or dagger references or otherwise, in such manner or in such remote or obscure place as to deceptively minimize, obscure, or render it inconspicuous.

RULE 13. Deceptive Substitution of Furs.

(a) For any member of the industry deceptively to substitute inferior furs for furs of better quality which have been entrusted to him or it by fur merchants or garment manufacturers is an unfair trade practice.

(b) For any member of the industry deceptively to substitute inferior furs for furs of better quality sold by him or it to any member of the trade or to the purchasing public is an unfair trade practice.

RULE 14. Misrepresenting Services as "Free."

Representing as "free" the repair or storage of or other service in connection with fur garments when in fact such repairs or services are regularly included as part of another charge, with the tendency or capacity to mislead or deceive purchasers, prospective purchasers, or the consuming public, is an unfair trade practice.

RULE 15. Misrepresenting the Manufacture or Dyeing of Assembled Garments.

(a) It is an unfair trade practice to sell, offer for sale, advertise, describe, or otherwise represent assembled garments as being the product of one manufacturer or of one dyer when such is not the fact, with the tendency and capacity or effect of misleading or deceiving purchasers, prospective purchasers, or the consuming public.

(b) In case peltries are dyed to simulate other furs, it is an unfair

trade practice for the dyer thereof to fail to stamp such peltries with the true name of the furs, where such failure has the tendency and capacity or effect of misleading or deceiving purchasers, prospective purchasers, or the consuming public.

RULE 16. Misrepresenting Fur Garments as "Hollywood Models," etc.

The sale or offering for sale, through advertising or otherwise, of fur garments as bankrupt stock, samples, showroom models, "Hollywood Models," "Paris Models," "French Models," "Parisian Creations," "Furs worn by society women," receivers' stock, auction stock, assets of a liquidating estate, or the like, when such is not the fact, is an unfair trade practice.

RULE 17. Deceptive Guarantees or Warranties.

Making, or causing to be made or published, directly or indirectly, any false, misleading, or deceptive statement or representation in connection with any guarantee or warranty of fur garments as to their performance, durability, or resistance to discoloration is an unfair trade practice.

RULE 18. False Invoicing.

Withholding from or inserting in invoices, bills of sale, or other documents of title, any statements or information by reason of which omission or insertion a false record is made, wholly or in part, of the transactions represented on the face of such invoices, bills of sale, or other documents of title, with the purpose or effect of thereby misleading or deceiving purchasers, prospective purchasers, or the consuming public, is an unfair trade practice.

RULE 19. Defamation of Competitors and Disparagement of Their Products.

The defamation of competitors by falsely imputing to them dishonorable conduct, inability to perform contracts, questionable credit standing, or by other false representations, or the false disparagement of the grade, quality, or manufacture of the products of competitors, or of their business methods, selling prices, values, credit terms, policies, or services, is an unfair trade practice.

RULE 20. Commercial Bribery.

It is an unfair trade practice for a member of the industry directly or indirectly to give or offer to give, or permit or cause to be given, money or anything of value to agents, employees, or representatives of customers or prospective customers, or to agents, employees, or representatives of competitors' customers or prospective customers, without the knowledge of their employers or principals, as an inducement to influence their employers or principals to purchase or contract to purchase products manufactured or sold by such industry

member or the maker of such gift or offer or to influence such employers or principals to refrain from dealing in the products of competitors or from dealing or contracting to deal with competitors.

RULE 21. *Inducing Breach of Contract.*

Inducing or attempting to induce the breach of existing lawful contracts between competitors and their customers or their suppliers by any false or deceptive means whatsoever, or interfering with or obstructing the performance of any such contractual duties or services by any such means, with the purpose and effect of unduly hampering, injuring, or prejudicing competitors in their businesses, is an unfair trade practice.

RULE 22.

(a) *Prohibited Discriminatory Prices, or Rebates, Refunds, Discounts, Credits, Etc.,¹ Which Effect Unlawful Price Discrimination.*—It is an unfair trade practice for any member of the industry engaged in commerce,² in the course of such commerce, to grant or allow, secretly or openly, directly or indirectly, any rebate, refund, discount, credit, or other form of price differential,¹ where such rebate, refund, discount, credit, or other form of price differential effects a discrimination in price between different purchasers of goods of like grade and quality, where either or any of the purchases involved therein are in commerce,² and where the effect thereof may be substantially to lessen competition or tend to create a monopoly in any line of commerce,² or to injure, destroy, or prevent competition with any person who either grants or knowingly receives the benefit of such discrimination, or with customers of either of them: *Provided, however*—

(1) That the goods involved in any such transaction are sold for use, consumption, or resale within any place under the jurisdiction of the United States;

(2) That nothing herein contained shall prevent differentials which make only due allowance for differences in the cost of manufacture, sale, or delivery resulting from the differing methods or quantities in which such commodities are to such purchasers sold or delivered;

(3) That nothing herein contained shall prevent persons engaged in selling goods, wares, or merchandise in commerce² from selecting their own customers in bona fide transactions and not in restraint of trade;

(4) That nothing herein contained shall prevent price changes from time to time where made in response to changing conditions

¹ Paragraph (a) of Rule 22 shall not be construed as embracing practices prohibited by paragraphs (b), (c), and (d) of this rule.

² See footnote, p. 460.

affecting either (a) the market for the goods concerned, or (b) the marketability of the goods, such as, but not limited to, actual or imminent deterioration of perishable goods, obsolescence of seasonal goods, distress sales under court process, or sales in good faith in discontinuance of business in the goods concerned.

(b) *Prohibited Brokerage and Commissions.*—It is an unfair trade practice for any member of the industry engaged in commerce,² in the course of such commerce, to pay or grant, or to receive or accept, anything of value as a commission, brokerage, or other compensation, or any allowance or discount in lieu thereof, except for services rendered in connection with the sale or purchase of goods, wares, or merchandise, either to the other party to such transaction or to an agent, representative, or other intermediary therein where such intermediary is acting in fact for or in behalf, or is subject to the direct or indirect control, of any party to such transaction other than the person by whom such compensation is so granted or paid.

(c) *Prohibited Advertising or Promotional Allowances, Etc.*—It is an unfair trade practice for any member of the industry engaged in commerce² to pay or contract for the payment of advertising or promotional allowances or any other thing of value to or for the benefit of a customer of such member in the course of such commerce as compensation or in consideration for any services or facilities furnished by or through such customer in connection with the processing, handling, sale, or offering for sale of any products or commodities manufactured, sold, or offered for sale by such member, unless such payment or consideration is available on proportionally equal terms to all other customers competing in the distribution of such products or commodities.

(d) *Prohibited Discriminatory Services or Facilities.*—It is an unfair trade practice for any member of the industry engaged in commerce² to discriminate in favor of one purchaser against another purchaser or purchasers of a commodity bought for resale, with or without processing, by contracting to furnish or by furnishing, or by contributing to the furnishing of, any services or facilities connected with the processing, handling, sale, or offering for sale of such commodity so purchased upon terms not accorded to all purchasers on proportionally equal terms.

(e) *Illegal Price Discrimination.*—It is an unfair trade practice for any member of the industry or other person engaged in commerce,² in the course of such commerce, to discriminate in price in any other respect contrary to Section 2 of the Clayton Act as amended by the Act of Congress approved June 19, 1936 (Public, No. 692, 74th Con-

² See footnote, p. 460.

gress), or knowingly to induce or receive a discrimination in price which is prohibited by such section as amended.

RULE 23. Discriminatory Returns.

It is an unfair trade practice for any member of the industry engaged in commerce² to discriminate in favor of one customer-purchaser against another customer-purchaser of fur pieces or garments made wholly or in part of fur, bought from such member of the industry for resale, by contracting to furnish or furnishing in connection therewith, upon terms not accorded to all customer-purchasers on proportionally equal terms, the service or facility whereby such favored purchaser is accorded the privilege of returning such merchandise so purchased and receiving therefor credit or refund of purchase price: *Provided, however*, Nothing in any of the rules herein shall prohibit or be used to prevent the return of merchandise by purchaser, for credit or refund of purchase price, when and because such merchandise has not been properly labeled by the seller as to its true character, or has been otherwise falsely or deceptively labeled or represented, or when and because such merchandise is defective in material, workmanship, or in any other respect contrary to warranty or purchase contract.

RULE 24. Imitation of Trade-marks, Trade Names, etc.

The imitation or use of valid and exclusively owned trade-marks, trade names, brands, or labels of competitors, having the tendency and capacity or effect of misleading or deceiving purchasers, prospective purchasers, or the consuming public, is an unfair trade practice.

RULE 25. Representing Retail Prices as Wholesale.

For any wholesaler, manufacturer, jobber, or broker to advertise for sale, offer to sell, or sell, fur garments at prices represented to be wholesale, through the medium of invoices, letterheads, statements, labels, printed matter, or by the use of the words "Wholesaler," "Manufacturer," "Jobber," or "Broker," or in any other manner, when in truth and in fact such prices are not wholesale prices, is an unfair trade practice.

RULE 26. Consignment Selling.

It is an unfair trade practice for any member of the industry to use the practice of shipping goods on consignment or pretended consignment for the purpose and with the effect of artificially clogging trade outlets and unduly restricting competitors' use of said trade outlets in getting their goods to consumers through regular channels of distribution, or with such purpose to entirely close said trade outlets to such competitors so as to substantially lessen competition or

² See footnote, p. 460.

tend to create a monopoly or to unreasonably restrain trade: *Provided, however*, That nothing herein shall be construed or used as restricting or preventing consignment shipping or marketing of commodities in good faith and without artificial interference with competitors' use of the usual channels of distribution in such manner as thereby to suppress competition or restrain trade.

RULE 27. Misrepresenting the Price of Remodeling, Restyling, Remaking, or Altering Fur Garments.

It is an unfair trade practice deceptively to advertise or offer to remodel, remake, restyle, or alter a fur garment at a specified price, as an inducement to secure such work, thereafter charging a higher price than the price advertised or represented.

RULE 28. Failure to Disclose Damage to Peltries.

It is an unfair trade practice to sell or offer for sale furs or fur garments which have been burned, damaged, or otherwise injured in process of dyeing, dressing, or otherwise, without disclosing such fact through suitable tags, stamps, or labels, with the tendency and capacity or effect of misleading or deceiving customers, prospective customers, or the consuming public.

RULE 29. Fictitious Prices.

Offering merchandise for sale at prices purported to be reduced from what are in fact fictitious prices, or offering merchandise for sale at a purported reduction in price when such purported reduction is in fact fictitious, with the tendency and capacity or effect of misleading or deceiving purchasers, prospective purchasers, or the consuming public, is an unfair trade practice.

GROUP II*

RULE A. Return of Merchandise.

The practice, by members of the industry, of selling merchandise and later permitting the purchaser to return it for credit or refund of purchase price, without just cause, creates waste and loss, increases the cost of doing business, to the detriment of both the industry and the public, and is condemned by the industry, subject, however, to requirements and limitations set forth in the provisions of Rule 23 of Group I, herein.

RULE B. Selling Furs at Auction.

In order to protect the purchasing public from fraud in the purchase of furs at auction, it is the judgment of the industry that the name and address of the member of the industry offering furs for sale in such manner should be disclosed.

Promulgated by the Federal Trade Commission June 17, 1938.

* See page VIII for headnote applicable to Group II Rules.

TRADE PRACTICE RULES

RESPECTING

SHRINKAGE OF WOVEN COTTON YARD GOODS

PROMULGATED JUNE 30, 1938

STATEMENT BY THE COMMISSION

Trade practice rules on the subject of shrinkage of woven cotton yard goods, as herein set forth, have been approved and are promulgated by the Commission under its trade practice conference procedure.

The general purpose of such rules is to provide for the elimination and prevention of misrepresentation, deception, and unfair methods or practices concerning the preshrunk character or residual shrinkage of woven cotton merchandise; and to this end to make provision for proper designations and descriptions thereof which may be used in the marketing of such merchandise to the purchasing and consuming public.

In the course of the proceedings an industry conference was held in New York City under the Commission's auspices and proposed trade practice rules on the subject were submitted by interested industry groups. Thereafter tentative action was taken by the Commission on the rules so submitted and a draft of proposed rules was made available upon public notice of at least fifteen days, in pursuance of which all interested or affected parties were afforded opportunity to present such pertinent views, suggestions, or objections as they desired and to be heard in respect to the proposed rules. Such hearing was held in Washington and all matters submitted orally and in writing were received and filed in the proceeding.

Thereafter, and upon consideration of the entire matter by the Commission, final action was taken whereby the rules appearing herein under Group I were approved and ordered promulgated.

THE RULES

GROUP I*

RULE 1. *Definition.*

As used in these rules, the term "residual shrinkage" applied to woven cotton yard goods in the piece means the shrinkage or shrinking properties remaining in such goods after the same have undergone a shrinking process.

RULE 2.

The practice of selling, offering for sale, advertising, describing, branding, marking, or labeling woven cotton yard goods in a manner

* See page VIII for headnote applicable to Group II Rules.

which is calculated to mislead or deceive or has the tendency and capacity or effect of misleading or deceiving purchasers, prospective purchasers, or the consuming public with respect to the preshrunk character of such goods, the residual shrinkage remaining therein, or with respect to the extent of the shrinkage to which such goods have been subjected, or respecting any other shrinkage properties, quality, or character of such goods, is an unfair trade practice.

RULE 3.

In the sale or distribution of woven cotton yard goods, it is an unfair trade practice: (a) to use, or cause to be used, directly or indirectly, the terms "Full Shrunk," "Preshrunk," "Shrunk," "Shrinkproof," "Will not Shrink," "Mill Shrunk," "Double Shrunk," "Non-Shrinkable," or word, term, mark, label, or representation of like effect or similar import, as descriptive of such goods when the same are not in fact shrinkproof or non-shrinkable, or have not in fact been fully shrunk or preshrunk to the extent that no residual shrinkage is left remaining in such goods, or (b) otherwise to use, or cause to be used, any such word, term, mark, label, or representation so as to mislead or deceive purchasers, prospective purchasers, or the consuming public into the belief that such goods have been shrunk to a greater degree than is in fact true or that the residual shrinkage of such goods is less than is in fact true.

RULE 4.

Nothing in these rules shall prohibit the use of the term "Full Shrunk," "Preshrunk," "Shrunk," "Shrinkproof," "Non-Shrinkable," or word, term, mark, label, or representation of like effect or similar import, as descriptive of woven cotton yard goods which have undergone the application of a shrinking process and thereby have been shrunk or preshrunk to the extent that no residual shrinkage is left remaining in such goods, and provided that subsequent to the application of such shrinking process the goods have not been subjected to stretching or to any condition or process which has restored shrinking properties or residual shrinkage to such goods.

RULE 5. *Use of terms "Preshrunk" or "Shrunk" with Qualifications.*

(I) In the case of woven cotton yard goods which have undergone the application of a shrinking process and have been shrunk to a substantial extent but as to which there remains a certain amount of residual shrinkage, nothing in these rules shall prohibit the use of the term "Preshrunk," "Shrunk," or term or word of like effect or similar import, as an integral part of or in immediate conjunction with a truthful phrase, statement, or assertion clearly and unequivocally stating the fact that such goods have been preshrunk or shrunk to a substantial extent and also setting forth in percentage or percentages the

amount of residual shrinkage remaining in both the warp and the filling, or in the warp or the filling whichever has the greater residual shrinkage. To avoid confusion, deception, or misunderstanding, the standard shrinkage test provided for in Paragraph V of this rule should be used in determining percentages to be specified in such designations. The following are typical examples of designations provided for in this rule:

(a) "Preshrunk (or shrunk)—Will not shrink more than —% under Commercial Standard CS59-36."

(b) "Preshrunk (or shrunk)—Residual shrinkage will not exceed —% under Commercial Standard CS59-36."

(c) "Preshrunk (or shrunk)—Residual shrinkage will not exceed warp —%, filling —%, Commercial Standard CS59-36."

(d) "These goods have been shrunk (or preshrunk) to the extent that residual shrinkage will not exceed —% when tested in accordance with the recognized and approved standards or tests."

(II) The residual shrinkage percentage designations provided for in this Rule 5 for woven cotton yard goods should be stamped on or otherwise firmly affixed to the material in conspicuous size and legibility of type or style, and should also appear similarly on all invoices, labels, marks, or advertisements which carry reference to the shrinkage of the goods.

(III) The use of residual shrinkage percentage designations not in conformity with results obtainable under the test specified in Paragraph V of this rule, with the capacity and tendency or effect of misleading or deceiving purchasers, prospective purchasers, or the consuming public, is an unfair trade practice.

(IV) The use or specification of an unreliable or inadequate test in any such designations, or the refusal to specify a test which is proper and applicable, when done for the purpose or with the capacity and tendency or effect of directly or indirectly misleading or deceiving purchasers, prospective purchasers, or the consuming public, is an unfair trade practice.

(V) The following test is deemed to be an accepted and recognized test for determining shrinkage properties or residual shrinkage of woven cotton yard goods in the application of these rules and is recommended for use as a standard shrinkage test for this purpose:

"Commercial Standard CS59-36"

RULE 6.

It is an unfair trade practice for any person, firm, or corporation to aid, abet, coerce, or induce another, directly or indirectly, to use or promote the use of any unfair trade practice specified in these rules.

Promulgated by the Federal Trade Commission June 30, 1938.

TRADE PRACTICE RULES FOR THE

MACARONI, NOODLES, AND RELATED PRODUCTS INDUSTRY

PROMULGATED JULY 7, 1938

STATEMENT BY THE COMMISSION

Trade practice rules for the Macaroni, Noodles, and Related Products Industry, as herein set forth, have been approved and are promulgated by the Federal Trade Commission under its trade practice conference procedure.

The products of the industry to which the rules relate comprise macaroni, spaghetti, vermicelli, noodles, and related products in whatever form or style the same may be made.

In the course of the proceedings, an industry conference was held in Chicago under the Commission's auspices and proposed trade practice rules were submitted by members of the industry. Thereafter tentative action was taken by the Commission on the rules so submitted and a draft of proposed rules was made available upon public notice of at least fifteen days, in pursuance of which all interested and affected parties were afforded opportunity to present such pertinent facts, suggestions, or objections as they desired and to be heard in respect to the proposed rules. Such hearing was held in Washington and all matters submitted orally and in writing were received and filed in the proceeding.

Thereafter, and upon consideration of the entire matter by the Commission, final action was taken whereby the rules appearing herein under Group I were approved and ordered promulgated.

These rules do not in any respect supplant, or relieve anyone of the necessity of complying with, the legal requirements of the pure food laws or other provision of law. They are established under laws administered by the Federal Trade Commission for the purpose of more effectively stamping out unfair practices in the interest of the public, and to assist in general law enforcement to this end.

The rules promulgated as herein set forth supersede the trade practice submittal of the Package Macaroni Industry of 1920, summarized in a general letter of the Commission to the members of such industry under date of September 22, 1920.

THE RULES

GROUP I*

RULE 1. *Misrepresentation of Industry Products.*

The practice of selling, advertising, describing, branding, mark-

* See page VIII for headnote applicable to Group I Rules.

ing, labeling, or packing macaroni, noodles, or related products, or any simulation or imitation thereof, in a manner which is calculated to mislead or deceive, or has the tendency and capacity or effect of misleading or deceiving, purchasers, prospective purchasers, or the consuming public with respect to the grade, quality, quantity, substance, character, nature, origin, size, material, content, composition, coloring, preparation, or manufacture of such products, or in any other material respect, is an unfair trade practice.

RULE 2. Specifications—Macaroni and Noodle Products.

For the purpose of and as used in these rules:

(a) *Macaroni* is understood to be the shaped and dried doughs prepared by adding water to one or more of the following: semolina, farina, wheat flour. It may contain added salt. In the finished product the moisture content does not exceed 13 percent. Various shapes of macaroni are known under distinguishing names, such as spaghetti, vermicelli, etc.

(b) *Egg Macaroni* is understood to be the shaped and dried doughs prepared by adding eggs and water, with or without salt, to one or more of the following: semolina, farina, wheat flour. The egg ingredient may be whole egg and/or egg yolk. In the finished product the moisture content does not exceed 13 percent and the egg-solids content upon the moisture-free basis is not less than 5.5 percent.

(c) *Noodles, Egg Noodles* are understood to be the shaped and dried doughs prepared from semolina, farina, or wheat flour and eggs, with or without water, and with or without salt. The egg ingredient may be whole egg and/or egg yolk. In the finished product the moisture content does not exceed 13 percent and the egg-solids content upon the moisture-free basis is not less than 5.5 percent. Noodles are commonly ribbon-shaped.

(d) *Plain noodles* are understood to be the shaped and dried doughs prepared from semolina, farina, or wheat flour and water, with or without salt. In the finished product the moisture content does not exceed 13 percent. Plain noodles are commonly ribbon-shaped.

RULE 3. Misuse of words "Macaroni," "Spaghetti," "Vermicelli," "Egg Macaroni," "Noodles," "Egg Noodles," "Plain Noodles," etc.

It is an unfair trade practice to sell, offer for sale, advertise, describe, brand, label, or otherwise represent, directly or indirectly, any product as being macaroni, spaghetti, vermicelli, egg macaroni, noodles, egg noodles, plain noodles, or other similar macaroni or noodle product, when such product does not conform to the specifications herein before set forth in Rule 2.

RULE 4. Misrepresentation of Semolina or Farina Products.

It is an unfair trade practice to sell, offer for sale, advertise, describe, brand, label, or otherwise represent any macaroni or noodle product as being a semolina or farina product when such is not true in fact.

RULE 5. Misrepresentation as to Egg Content of Product.

It is an unfair trade practice to sell, offer for sale, advertise, describe, brand, label, or otherwise represent, directly or indirectly, any product as being egg macaroni, noodles, or egg noodles when such is not true in fact, or when such product does not actually contain egg in sufficient proportion to meet the specifications hereinbefore set forth in Rule 2.

RULE 6. Use of Deceptive Coloring or Deceptive Containers.

It is an unfair trade practice to use yellow coloring in, or yellow transparent containers for, any macaroni, noodle, or related product, in such manner as deceptively to import or imply to purchasers, prospective purchasers, or the consuming public that such product contains egg in greater proportion than is in fact present, or in such manner as to mislead or deceive in any other respect.

RULE 7. Deception as to Additional Food Ingredients.

(a) In case additional food ingredients, not including those specified under Rule 2, are used in macaroni, noodles, or related products, full and nondeceptive disclosure of such fact should be made; and it is an unfair trade practice to conceal, or fail or refuse to disclose, or to misrepresent, directly or indirectly, the proportion of such food ingredients present in said macaroni, noodles, or related products, with the capacity and tendency or effect of misleading or deceiving purchasers, prospective purchasers, or the consuming public.

(b) It is an unfair trade practice to advertise, describe, brand, label, or otherwise represent any product of the industry as containing a food ingredient when such food ingredient is not present at all, or when such food ingredient is not present in substantial and characterizing amounts, with the capacity and tendency or effect of misleading or deceiving purchasers, prospective purchasers, or the consuming public.

(c) Nothing in these rules shall be construed as authorizing or permitting the use of any food ingredient contributing a yellow color for the purpose or with the effect of misleading or deceiving the purchasing public.

RULE 8. Deceptive Depictions.

The use of photographs, cuts, engravings, illustrations, or pictorial or other depictions or devices of industry products in catalogues, sales literature, or advertisements, or on packages or containers, or otherwise, in such manner as to have the capacity and tendency or

effect of misleading or deceiving the purchasing or consuming public as to the grade, quality, quantity, substance, character, nature, origin, size, material, content, composition, coloring, preparation, or manufacture of such products, is an unfair trade practice.

RULE 9. Defamation of Competitors and Disparagement of Their Products.

The defamation of competitors by falsely imputing to them dishonorable conduct, inability to perform contracts, questionable credit standing, or by other false representations, or the false disparagement of the grade, quality, or manufacture of the products of competitors, or of their business methods, selling prices, values, credit terms, policies, or services, is an unfair trade practice.

RULE 10. Failure to Brand Industry Products.

In the sale, offering for sale, or shipment of industry products, the failure to brand, mark, or identify such products so as to disclose their true character, where such failure has the tendency, capacity, or effect of misleading or deceiving purchasers, prospective purchasers, or the consuming public, is an unfair trade practice.

RULE 11. Selling Below Cost.

The practice of selling industry products below the seller's cost, with the intent and with the effect of injuring a competitor and where the effect may be substantially to lessen competition or tend to create a monopoly or unreasonably restrain trade, is an unfair trade practice; all elements recognized by good accounting practice as proper elements of such cost shall be included in determining cost under this rule.

RULE 12. Imitation or Simulation of Trade-marks, etc.

The imitation or simulation of the trade-marks, trade names, labels, or brands of competitors, with the purpose or with the tendency and capacity or effect of misleading or deceiving purchasers, prospective purchasers, or the consuming public, is an unfair trade practice.

RULE 13. Publication or Circulation of False or Misleading Price Quotations, etc.

The publishing or circulating, by any member of the industry, of false or misleading price quotations, price lists, or terms of sale, with the tendency, capacity, or effect of misleading or deceiving purchasers, prospective purchasers, or the consuming public, is an unfair trade practice.

RULE 14. False Invoicing.

Withholding from or inserting in invoices any statements or information by reason of which omission or insertion a false record is made, wholly or in part, of the transactions represented on the face of such invoices, with the purpose or effect of thereby misleading or

deceiving purchasers, prospective purchasers, or the consuming public, is an unfair trade practice.

RULE 15.

(a) *Prohibited Discriminatory Prices, or Rebates, Refunds, Discounts, Credits, Etc.,¹ Which Effect Unlawful Price Discrimination.*—It is an unfair trade practice for any member of the industry engaged in commerce,² in the course of such commerce, to grant or allow, secretly or openly, directly or indirectly, any rebate, refund, discount, credit, or other form of price differential,¹ where such rebate, refund, discount, credit, or other form of price differential effects a discrimination in price between different purchasers of goods of like grade and quality; where either or any of the purchases involved therein are in commerce² and where the effect thereof may be substantially to lessen competition or tend to create a monopoly in any line of commerce,² or to injure, destroy, or prevent competition with any person who either grants or knowingly receives the benefit of such discrimination or with customers of either of them: *Provided, however—*

(1) That the goods involved in any such transaction are sold for use, consumption, or resale within any place under the jurisdiction of the United States;

(2) That nothing herein contained shall prevent differentials which make only due allowance for differences in the cost of manufacture, sale, or delivery resulting from the differing methods or quantities in which such commodities are to such purchasers sold or delivered;

(3) That nothing herein contained shall prevent persons engaged in selling goods, wares, or merchandise in commerce² from selecting their own customers in bona fide transactions and not in restraint of trade;

(4) That nothing herein contained shall prevent price changes from time to time where made in response to changing conditions affecting either (a) the market for the goods concerned, or (b) the marketability of the goods, such as, but not limited to, actual or imminent deterioration of perishable goods, obsolescence of seasonal goods, distress sales under court process, or sales in good faith in discontinuance of business in the goods concerned.

(b) *Prohibited Brokerage and Commissions.*—It is an unfair trade practice for any member of the industry engaged in commerce,² in the course of such commerce, to pay or grant, or to receive or accept, anything of value as a commission, brokerage, or other compensation, or any allowance or discount in lieu thereof, except for services rendered

¹ Paragraph (a) of Rule 15 shall not be construed as embracing practices prohibited by paragraphs (b), (c), and (d) of this rule.

² See footnote, p. 460.

in connection with the sale or purchase of goods, wares, or merchandise, either to the other party to such transaction or to an agent, representative, or other intermediary therein where such intermediary is acting in fact for or in behalf, or is subject to the direct or indirect control, of any party to such transaction other than the person by whom such compensation is so granted or paid.

(c) *Prohibited Advertising or Promotional Allowances, Etc.*—It is an unfair trade practice for any member of the industry engaged in commerce² to pay or contract for the payment of advertising or promotional allowances or any other thing of value to or for the benefit of a customer of such member in the course of such commerce as compensation or in consideration for any services or facilities furnished by or through such customer in connection with the processing, handling, sale, or offering for sale of any products or commodities manufactured, sold, or offered for sale by such member, unless such payment or consideration is available on proportionally equal terms to all other customers competing in the distribution of such products or commodities.

(d) *Prohibited Discriminatory Services or Facilities.*—It is an unfair trade practice for any member of the industry engaged in commerce² to discriminate in favor of one purchaser against another purchaser or purchasers of a commodity bought for resale, with or without processing, by contracting to furnish or by furnishing, or by contributing to the furnishing of, any services or facilities connected with the processing, handling, sale, or offering for sale of such commodity so purchased upon terms not accorded to all purchasers on proportionally equal terms.

(e) *Illegal Price Discrimination.*—It is an unfair trade practice for any member of the industry or other person engaged in commerce,² in the course of such commerce, to discriminate in price in any other respect contrary to Section 2 of the Clayton Act as amended by the Act of Congress approved June 19, 1936 (Public, No. 692, 74th Congress), or knowingly to induce or receive a discrimination in price which is prohibited by such section as amended.

A Committee on Trade Practices is hereby created by the industry to cooperate with the Federal Trade Commission and to perform such acts as may be legal and proper to put these rules into effect.

Promulgated by the Federal Trade Commission July 7, 1938.

² See footnote, p. 460.

TRADE PRACTICE RULES

FOR THE

TOMATO PASTE MANUFACTURING INDUSTRY

PROMULGATED SEPTEMBER 3, 1938

STATEMENT BY THE COMMISSION

Trade practice rules for the Tomato Paste Manufacturing Industry, as herein set forth, are promulgated by the Federal Trade Commission under its trade practice conference procedure.

The product of the industry to which the rules relate is tomato paste, a canned tomato product extensively used in cooking.

The total value of the production of tomato paste is estimated to be about \$6,400,000 annually. The 1937 pack approximated 1,700,000 cases.

In the course of the proceedings an industry conference was held in San Francisco, California, under the Commission's auspices, and proposed trade practice rules were submitted by members of the industry. Thereafter tentative action was taken by the Commission on the rules so submitted and a draft of proposed rules was made available upon public notice of at least fifteen days, in pursuance of which all interested and affected parties were afforded opportunity to present such pertinent facts, suggestions, or objections as they desired and to be heard in respect to the proposed rules. Such hearing was held in Washington and all matters submitted orally and in writing were received and filed in the proceeding.

Thereafter, and upon consideration of the entire matter, final action was taken and the rules in the form appearing in Group I and Group II were respectively approved and received by the Commission.

These rules do not in any respect supplant, or relieve anyone of the necessity of complying with, the legal requirements of the pure food laws or other provision of law. They are established under statutes administered by the Federal Trade Commission for the purpose of more effectively stamping out unfair practices in the interest of the public, and to assist in general law enforcement to this end.

THE RULES

GROUP I*

RULE 1. *Misrepresentation of Industry Products.*

The practice of selling, packing, advertising, or representing tomato

* See page VIII for headnote applicable to Group I Rules.

paste or related products, or any simulation or imitation thereof, in a manner which is calculated to mislead or deceive or has the tendency and capacity or effect of misleading or deceiving purchasers, prospective purchasers, or the consuming public with respect to the character, nature, content, grade, quality, quantity, origin, substance, material, preparation, or manufacture of such products, or in any other material respect, is an unfair trade practice.

RULE 2. *Specifications—Tomato Paste.*

For the purpose of and as used in these rules:

(a) *Tomato Paste (Salsa di Pomodoro, "Salsa")* is understood to be the product resulting from the concentration of the screened or strained fleshy and liquid portions of ripe tomatoes, except those portions from skin and core trimmings; with or without the addition of salt, and with or without the addition of basil leaf. The finished product shall contain not less than 22% of tomato solids.

(b) Should such minimum of 22% tomato solids hereafter be raised to a higher percentage or proportion by applicable provisions of law or by rules or regulations in pursuance thereof, then such higher percentage so fixed shall be considered the minimum under these rules, in lieu of such 22% specified in paragraph (a) of this rule.

(c) *Heavy Tomato Paste ("Concentrato")* is understood to be tomato paste containing not less than 33% of tomato solids.

(d) It is an unfair trade practice for any member of the industry or other seller to cause the concentration or content of his tomato paste to be misrepresented, or by any other means to represent, directly or indirectly, that the product is of a certain concentration of 22% or more tomato solids when such is not true in fact.

RULE 3. *Misrepresentation as to Tomato Paste.*

It is an unfair trade practice to sell, offer for sale, advertise, describe, or otherwise represent, directly or indirectly, any product as being tomato paste (*Salsa di Pomodoro, "Salsa"*), heavy tomato paste (*"Concentrato"*), or other similar tomato paste product, when such product does not conform to the specifications hereinabove set forth in Rule 2.

RULE 4. *Misrepresentation as to Artificial Color.*

It is an unfair trade practice to sell, offer for sale, advertise, or otherwise represent, directly or indirectly, any product of the industry containing added artificial color without then and there making full and nondeceptive disclosure of the presence of such added artificial color.

The use of any coloring matter whatsoever shall not be permitted

when the same is introduced for the purpose or with the effect of concealment or masking damage or inferiority, or of adulterating the product or rendering the same deleterious.

RULE 5. *Misrepresentation as to Tomato Content of Product.*

It is an unfair trade practice to sell, offer for sale, advertise, describe, or otherwise represent, directly or indirectly, any product of the industry as containing a higher tomato solids content than is actually the case.

RULE 6. *Deceptive Depictions.*

The use of photographs, cuts, engravings, illustrations, or pictorial or other depictions, or devices, of industry products, in catalogues, sales literature, advertisements, or other representations, in such manner as to have a capacity and tendency or effect of misleading or deceiving the purchasing or consuming public as to the origin, manufacture, grade, quality, quantity, size, composition, material, coloring, or content of any products of the industry, or ingredient thereof, or in any other material respect, is an unfair trade practice.

RULE 7. *Defamation of Competitors and Disparagement of Their Products.*

The defamation of competitors by falsely imputing to them dishonorable conduct, inability to perform contracts, questionable credit standing, or by other false representations, or the false disparagement of the grade, quality, or manufacture of the products of competitors, or of their business methods, selling prices, values, credit terms, policies, or services, is an unfair trade practice.

RULE 8. *Substituting Inferior Products for Those Ordered.*

The practice of using or substituting any product of the industry inferior in grade or quality to that specified by the purchaser, without the consent of said purchaser to such use or substitution or with the tendency, capacity, or effect of otherwise misleading or deceiving purchasers, prospective purchasers, or the consuming public, is an unfair trade practice.

RULE 9. *Commercial Bribery.*

Directly or indirectly to give, or permit to be given, or offer to give, money or anything of value to agents, employees, or representatives of customers or prospective customers, or to agents, employees, or representatives of competitors' customers or prospective customers, without the knowledge of their employers or principals, as an inducement to influence their employers or principals to purchase or contract to purchase industry products from the maker of such gift or offer or to influence such employers or principals to refrain from dealing or contracting to deal with competitors, is an unfair trade practice.

RULE 10. *Inducing Breach of Contract.*

Knowingly inducing or attempting to induce the breach of existing lawful contracts between competitors and their customers or their suppliers by any false or deceptive means whatsoever, or knowingly interfering with or obstructing the performance of any such contractual duties or services by any such means, with the purpose and effect of unduly hampering, injuring, or prejudicing competitors in their businesses, is an unfair trade practice.

RULE 11. *Enticing Away Employees of Competitors.*

Wilfully enticing away the employees of competitors, with the purpose and effect of unduly hampering, injuring, or prejudicing competitors in their businesses, is an unfair trade practice.

RULE 12. *Selling Below Cost.*

The practice of selling industry products below the seller's cost, with the intent and with the effect of injuring a competitor and where the effect may be substantially to lessen competition or tend to create a monopoly or unreasonably restrain trade, is an unfair trade practice; all elements recognized by good accounting practice as proper elements of such cost shall be included in determining cost under this rule.

RULE 13.

(a) *Prohibited Discriminatory Prices, or Rebates, Refunds, Discounts, Credits, Etc.,¹ Which Effect Unlawful Price Discrimination.*—It is an unfair trade practice for any member of the industry engaged in commerce,² in the course of such commerce, to grant or allow, secretly or openly, directly or indirectly, any rebate, refund, discount, credit, or other form of price differential,¹ where such rebate, refund, discount, credit, or other form of price differential effects a discrimination in price between different purchasers of goods of like grade and quality, where either or any of the purchases involved therein are in commerce,² and where the effect thereof may be substantially to lessen competition or tend to create a monopoly in any line of commerce,² or to injure, destroy, or prevent competition with any person who either grants or knowingly receives the benefit of such discrimination or with customers of either of them: *Provided, however*—

(1) That the goods involved in any such transaction are sold for use, consumption, or resale within any place under the jurisdiction of the United States;

(2) That nothing herein contained shall prevent differentials which make only due allowance for differences in the cost of manufacture, sale, or delivery resulting from the differing methods

¹ Paragraph (a) of Rule 13 shall not be construed as embracing practices prohibited by paragraphs (b), (c), and (d) of this rule.

or quantities in which such commodities are to such purchasers sold or delivered;

(3) That nothing herein contained shall prevent persons engaged in selling goods, wares, or merchandise in commerce² from selecting their own customers in bona fide transactions and not in restraint of trade;

(4) That nothing herein contained shall prevent price changes from time to time where made in response to changing conditions affecting either (a) the market for the goods concerned, or (b) the marketability of the goods, such as, but not limited to, actual or imminent deterioration of perishable goods, obsolescence of seasonal goods, distress sales under court process, or sales in good faith in discontinuance of business in the goods concerned.

(b) *Prohibited Brokerage and Commissions.*—It is an unfair trade practice for any member of the industry engaged in commerce,² in the course of such commerce, to pay or grant, or to receive or accept, anything of value as a commission, brokerage, or other compensation, or any allowance or discount in lieu thereof, except for services rendered in connection with the sale or purchase of goods, wares, or merchandise, either to the other party to such transaction or to an agent, representative, or other intermediary therein where such intermediary is acting in fact for or in behalf, or is subject to the direct or indirect control, of any party to such transaction other than the person by whom such compensation is so granted or paid.

(c) *Prohibited Advertising or Promotional Allowances, Etc.*—It is an unfair trade practice for any member of the industry engaged in commerce² to pay or contract for the payment of advertising or promotional allowances or any other thing of value to or for the benefit of a customer of such member in the course of such commerce as compensation or in consideration for any services or facilities furnished by or through such customer in connection with the processing, handling, sale, or offering for sale of any products or commodities manufactured, sold, or offered for sale by such member, unless such payment or consideration is available on proportionally equal terms to all other customers competing in the distribution of such products or commodities.

(d) *Prohibited Discriminatory Services or Facilities.*—It is an unfair trade practice for any member of the industry engaged in commerce² to discriminate in favor of one purchaser against another purchaser or purchasers of a commodity bought for resale, with or without processing, by contracting to furnish or by furnishing, or by contributing to the furnishing of, any services or facilities connected with the processing, handling, sale, or offering for sale of such com-

² See footnote, p. 460.

modity so purchased upon terms not accorded to all purchasers on proportionally equal terms.

(e) *Illegal Price Discrimination.*—It is an unfair trade practice for any member of the industry or other person engaged in commerce,² in the course of such commerce, to discriminate in price in any other respect contrary to Section 2 of the Clayton Act as amended by the Act of Congress approved June 19, 1936 (Public, No. 692, 74th Congress), or knowingly to induce or receive a discrimination in price which is prohibited by such section as amended.

RULE 14. *Misrepresentation as to Basil, Etc.*

It is an unfair trade practice to cause any tomato paste or related product to be represented, directly or indirectly, as containing basil leaf or any other ingredient when such is not true in fact; or when such basil leaf or other specified ingredient has been omitted in packing from various or sundry cans of the product so represented.

GROUP II*

RULE A. *Disclosure of Solids Content.*

The practice, by each member of the industry, of making clear and nondeceptive disclosure to the purchasing public of the percentage or proportion of tomato solids present in his product, thereby disclosing whether his tomato paste contains only the minimum percentage of tomato solids or some higher percentage, is recommended as a proper and desirable practice to follow in the interest of affording consumers and other purchasers correct information as to the concentration of the product, and of avoiding confusion, deception, and misrepresentation in respect thereto.

RULE B. *Repudiation of Contracts.*

Lawful contracts are business obligations which should be performed in letter and in spirit. The repudiation of contracts by sellers on a rising market or by buyers on a declining market is condemned by the industry.

RULE C. *Fake or Fictitious Bids.*

The industry condemns fake or fictitious bids made for the purpose of deceiving competitors and securing undue advantage. If plans and specifications are changed and new bids called for after the original bids have been submitted and opened, the same fairness should obtain as with the original bid.

RULE D. *Truthful Disclosure of Quality of Products.*

In the interest of consumer protection, the industry records itself

* See footnote, p. 460.

* See page VIII for headnote applicable to Group II Rules.

as favoring, and recommends, the practice of members making fair and truthful disclosure, in their advertising, labeling, sales literature, and other selling representations, of the quality and content of their products.

RULE E. *Dissemination of Credit Information.*

The industry records its approval of distributing information covering delinquent and slow accounts insofar as it may be lawfully done.

Promulgated by the Federal Trade Commission September 3, 1938.

TRADE PRACTICE RULES

FOR THE

OLEOMARGARINE MANUFACTURING INDUSTRY

PROMULGATED SEPTEMBER 27, 1938

STATEMENT BY THE COMMISSION

Trade practice rules for the Oleomargarine Manufacturing Industry, as herein set forth, are promulgated by the Federal Trade Commission under its trade practice conference procedure.

The product of the industry to which the rules relate is oleomargarine in its various forms, the total production of which, according to authoritative sources, for the fiscal year ended June 30, 1938, was 411,725,009 pounds.

In the course of the proceedings an industry conference was held in Chicago, Illinois, under the Commission's auspices, and proposed trade practice rules were submitted by members of the industry. Thereafter tentative action was taken by the Commission on the rules so submitted and a draft of proposed rules was made available upon public notice of at least fifteen days, in pursuance of which all interested and affected parties were afforded opportunity to present such pertinent facts, suggestions, or objections as they desired and to be heard in respect to the proposed rules. Such hearing was held in Washington and all matters submitted orally and in writing were received and filed in the proceeding.

Thereafter, and upon consideration of the entire matter, final action was taken and the rules in the form appearing herein under Group I and Group II were respectively approved and received by the Commission.

These rules do not in any respect supplant, or relieve anyone of the necessity of complying with, the legal requirements of the pure food laws or other provision of law. They are established under statutes administered by the Federal Trade Commission for the purpose of more effectively stamping out unfair practices in the interest of the public, and to assist in general law enforcement to this end.

THE RULES

GROUP I*

RULE 1. *Misrepresentation of Industry Products.*

It is an unfair trade practice to make or publish, or cause to be made or published, directly or indirectly, any false, misleading, or

* See page VIII for headnote applicable to Group I Rules.

deceptive statement or representation, by way of advertisement or otherwise, concerning the grade, quality, quantity, use, material, content, origin, nutritive value, preparation, manufacture, or distribution of oleomargarine, or in any other material respect.

RULE 2. *Misbranding.*

The false or deceptive marking or branding of oleomargarine with any word, phrase, name, trade-mark, label, picture, design, device, or other representation, with respect to the grade, quality, quantity, use, content, origin, preparation, manufacture, or distribution of such oleomargarine, or in any other material respect, is an unfair trade practice.

RULE 3. *Substitution of Products Not Conforming to Specifications.*

The substitution and delivery to customers, without the consent of the purchaser, of oleomargarine which does not conform to formula specifications, samples, or representations upon which the purchase order is based; or the substitution or delivery, with or without the consent of the purchaser, of oleomargarine which does not conform to applicable Federal or State laws or regulations; with the purpose or with the tendency and capacity or effect of misleading or deceiving, directly or indirectly, the purchasing or consuming public, is an unfair trade practice.

RULE 4. *Misrepresentation as to Milk Content.*

Falsely representing, directly or indirectly, through advertising or otherwise, that any type of oleomargarine contains milk when, in fact, the cream or any other food content has been extracted therefrom, for the purpose or with the tendency, capacity, or effect of misleading or deceiving purchasers, prospective purchasers, or the consuming public, is an unfair trade practice.

RULE 5. *Misrepresentation as to Fat Content.*

It is an unfair trade practice for any member of the industry to sell, or offer for sale through advertising or otherwise, any oleomargarine the fat content of which is less than that specified in applicable regulations, duly promulgated by authority of law, for the purpose, or with the tendency, capacity, or effect, of misleading or deceiving purchasers, prospective purchasers, or the consuming public.

RULE 6. *Compliance with State and Federal Specification Requirements.*

It is an unfair trade practice to sell or distribute, or cause to be sold or distributed, any oleomargarine manufactured in conformity with formula specifications of buyers or customers or otherwise, when such

formula specifications or manufacture is violative of applicable Federal or State laws or regulations and where the tendency and capacity or the effect thereof is, directly or indirectly, to mislead or deceive the purchasing or consuming public.

RULE 7. Commercial Bribery.

It is an unfair trade practice for a member of the industry directly or indirectly to give or offer to give, or permit or cause to be given, money or anything of value to agents, employees, or representatives of customers or prospective customers, or to agents, employees, or representatives of competitors' customers or prospective customers, without the knowledge of their employers or principals, as an inducement to influence their employers or principals to purchase or contract to purchase products manufactured or sold by such industry member or the maker of such gift or offer or to influence such employers or principals to refrain from dealing in the products of competitors or from dealing or contracting to deal with competitors.

RULE 8. Unlawful Interference with Raw Material Purchases.

It is an unfair trade practice for any member of the industry, by means of any monopolistic practices or through combination, conspiracy, coercion, boycott, threats, or any other unlawful means, directly or indirectly, to interfere with a competitor's right to purchase his raw materials and supplies from whomsoever he chooses, or to sell his product to whomsoever he chooses.

RULE 9. Defamation of Competitors and Disparagement of their Products.

The defamation of a competitor by falsely imputing to him dishonorable conduct, inability to perform contracts, questionable credit standing, or by other false representations, or the false disparagement of the grade, quality, or manufacture of the products of a competitor or of his business methods, selling prices, credit terms, policies, or services, is an unfair trade practice.

RULE 10. False Invoicing.

Withholding from or inserting in an invoice, billing, or statement any material information by reason of which omission or insertion a false record is made, wholly or in part, of the transaction which such invoice or billing or statement purports to represent, with the purpose or effect of thereby misleading or deceiving purchasers, prospective purchasers, or the consuming public, is an unfair trade practice.

RULE 11. Inducing Breach of Contract.

Inducing or attempting to induce the breach of existing lawful contracts between competitors and their customers or their suppliers, or between a competitor and his distributor or agent, by any false or

deceptive means whatsoever, or interfering with or obstructing the performance of any such contractual duties or services by any such means, with the purpose and effect of unduly hampering, injuring, or prejudicing competitors in their businesses, is an unfair trade practice.

RULE 12. Enticing Away Employees of Competitors.

Wilfully enticing away the employees of competitors, with the purpose and effect of unduly hampering, injuring, or prejudicing competitors in their businesses, is an unfair trade practice.

RULE 13. Consignment Selling.

It is an unfair trade practice for any member of the industry to use the practice of shipping goods on consignment or pretended consignment for the purpose and with the effect of artificially clogging trade outlets and unduly restricting competitors' use of said trade outlets in getting their goods to consumers through regular channels of distribution, or with such purpose to entirely close said trade outlets to such competitors so as to substantially lessen competition or tend to create a monopoly or to unreasonably restrain trade: *Provided, however*, That nothing herein shall be construed or used as restricting or preventing consignment shipping or marketing of commodities in good faith and without artificial interference with competitors' use of the usual channels of distribution in such manner as thereby to suppress competition or restrain trade.

RULE 14. Publication or Circulation of False or Misleading Price Quotations, Etc.

The making, publishing, or circulating by any member of the industry of false or misleading price quotations, price lists, terms or conditions of sale, or reports as to production or sales, with the tendency, capacity, or effect of misleading or deceiving purchasers, prospective purchasers, or the consuming public, is an unfair trade practice.

RULE 15. Selling Below Cost.

The practice of selling oleomargarine below the seller's cost, with the intent and with the effect of injuring a competitor and where the effect may be to substantially lessen competition or tend to create a monopoly or unreasonably restrain trade, is an unfair trade practice; all elements recognized by good accounting practice as proper elements of such cost shall be included in determining cost under this rule.

RULE 16. "Loss Leaders."

The practice of selling oleomargarine below the seller's cost as a "loss leader" to induce the purchase of any other product of the industry, the sale of the latter being used to recoup the loss sustained on the "loss leader" product so sold, with the tendency or capacity to mislead or deceive purchasers, prospective purchasers, or the consuming public, is an unfair trade practice.

RULE 17.

(a) *Prohibited Discriminatory Prices, or Rebates, Refunds, Discounts, Credits, Etc.,¹ Which Effect Unlawful Price Discrimination.*—It is an unfair trade practice for any member of the industry engaged in commerce,² in the course of such commerce, to grant or allow, secretly or openly, directly or indirectly, any rebate, refund, discount, credit, payment of dealer's license, or other form of price differential,¹ where such rebate, refund, discount, credit, payment of dealer's license, or other form of price differential effects a discrimination in price between different purchasers of goods of like grade and quality, where either or any of the purchases involved therein are in commerce,² and where the effect thereof may be substantially to lessen competition or tend to create a monopoly in any line of commerce,² or to injure, destroy, or prevent competition with any person who either grants or knowingly receives the benefit of such discrimination or with customers of either of them: *Provided, however*—

(1) That the goods involved in any such transaction are sold for use, consumption, or resale within any place under the jurisdiction of the United States;

(2) That nothing herein contained shall prevent differentials which make only due allowance for differences in the cost of manufacture, sale, or delivery resulting from the differing methods or quantities in which such commodities are to such purchasers sold or delivered;

(3) That nothing herein contained shall prevent persons engaged in selling goods, wares, or merchandise in commerce² from selecting their own customers in bona fide transactions and not in restraint of trade;

(4) That nothing herein contained shall prevent price changes from time to time where made in response to changing conditions affecting either (a) the market for the goods concerned, or (b) the marketability of the goods, such as, but not limited to, actual or imminent deterioration of perishable goods, obsolescence of seasonal goods, distress sales under court process, or sales in good faith in discontinuance of business in the goods concerned.

(b) *Prohibited Brokerage and Commissions.*—It is an unfair trade practice for any member of the industry engaged in commerce,² in the course of such commerce, to pay or grant, or to receive or accept, anything of value as a commission, brokerage, or other compensation, or any allowance or discount in lieu thereof, except for services rendered in connection with the sale or purchase of goods, wares, or merchan-

¹ Paragraph (a) of Rule 17 shall not be construed as embracing practices prohibited by paragraphs (b), (c), and (d) of this rule.

² See footnote, p. 460.

dise, either to the other party to such transaction or to an agent, representative, or other intermediary therein where such intermediary is acting in fact for or in behalf, or is subject to the direct or indirect control, of any party to such transaction other than the person by whom such compensation is so granted or paid.

(c) *Prohibited Advertising or Promotional Allowances, Etc.*—It is an unfair trade practice for any member of the industry engaged in commerce² to pay or contract for the payment of advertising or promotional allowances or any other thing of value to or for the benefit of a customer of such member in the course of such commerce as compensation or in consideration for any services or facilities furnished by or through such customer in connection with the processing, handling, sale, or offering for sale of any products or commodities manufactured, sold, or offered for sale by such member, unless such payment or consideration is available on proportionally equal terms to all other customers competing in the distribution of such products or commodities.

(d) *Prohibited Discriminatory Services or Facilities.*—It is an unfair trade practice for any member of the industry engaged in commerce² to discriminate in favor of one purchaser against another purchaser or purchasers of a commodity bought for resale, with or without processing, by contracting to furnish or by furnishing, or by contributing to the furnishing of, any services or facilities connected with the processing, handling, sale, or offering for sale of such commodity so purchased upon terms not accorded to all purchasers on proportionally equal terms.

(e) *Illegal Price Discrimination.*—It is an unfair trade practice for any member of the industry or other person engaged in commerce,² in the course of such commerce, to discriminate in price in any other respect contrary to Section 2 of the Clayton Act as amended by the Act of Congress approved June 19, 1936 (Public, No. 692, 74th Congress), or knowingly to induce or receive a discrimination in price which is prohibited by such section as amended.

GROUP II*

RULE A. *Cost Records.*

It is the judgment of the industry that each member should independently keep proper and accurate records for determining his costs.

RULE B. *Repudiation of Contracts.*

Lawful contracts are business obligations which should be performed in letter and in spirit. The repudiation of contracts by sellers on a

² See footnote, p. 460.

* See page VIII for headnote applicable to Group II Rules.

rising market or by buyers on a declining market is condemned by the industry.

RULE C. *Promotion of Use of American Agricultural Products.*

The industry recommends that the members thereof in the manufacture of their products encourage and promote the greater consumption of raw materials produced by American agriculture.

Promulgated by the Federal Trade Commission September 27, 1938.

TRADE PRACTICE RULES

FOR THE

SILK INDUSTRY

PROMULGATED NOVEMBER 4, 1938

STATEMENT BY THE COMMISSION

Trade practice rules for the Silk Industry, as herein set forth, are promulgated by the Federal Trade Commission under its trade practice conference procedure. The general purpose of the rules is to foster and promote fair competitive conditions and the protection of the purchasing and consuming public in the interest of both the industry and the public; to this end to provide for proper identification and disclosure of material content of merchandise containing or purporting to contain silk in whole or in part; to make provision for accurate designations and descriptions to be used in marketing such products; and to eliminate and prevent misrepresentation, deceptive concealment, and other unfair methods of competition or unfair or deceptive acts or practices.

In the course of the proceedings an industry conference was held in Washington, D. C., under the Commission's auspices, and proposed trade practice rules were submitted by members of the industry. Thereafter tentative action was taken by the Commission on the rules so submitted and a draft of proposed rules was made available upon public notice of at least fifteen days, in pursuance of which all interested and affected parties were afforded opportunity to present such pertinent facts, suggestions, or objections as they desired and to be heard in respect to the proposed rules. Such hearing was held in Washington and all matters submitted orally or in writing were received and filed in the proceeding.

Thereafter, and upon consideration of the entire matter, final action was taken and the rules in the form appearing herein under Group I and Group II were respectively approved and received by the Commission.

Information received in the premises indicates that 57,815,573 pounds of raw silk, with a dollar value of \$106,594,358, were imported into the United States in 1937. This raw product was converted by American mills and factories into more than 60 varieties of finished goods with a total retail sales value of approximately \$600,000,000. Such American industry is reported to have a capital investment of more than \$500,000,000 and to afford direct employment in the United States to approximately 250,000 persons.

As promulgated the Group I rules are intended to afford a helpful

guide to the industry and the public in respect to the described unfair trade practices, which are considered by the Commission to be harmful and illegal. The requirements of law as expressed in such rules are binding upon all engaged directly or indirectly in promoting the sale or distribution or other marketing of the fiber, yarn, thread, strands, fabric, garments, and products specified.

The rules for the Silk Industry herein promulgated supersede and replace prior rules published by the Federal Trade Commission on June 18, 1932, concerning the subject of silk weighting.

THE RULES

GROUP I*

The unfair trade practices which are embraced in these Group I rules are considered to be unfair methods of competition, unfair or deceptive acts or practices, or other illegal practices, prohibited, within the purview of the Federal Government, by acts of Congress as construed in the decisions of the Federal Trade Commission or the courts; and appropriate proceedings in the public interest will be taken by the Commission to prevent the use, by any person, partnership, corporation, or other organization, of such unlawful practices in or directly affecting interstate commerce.

Such provisions of the rules express requirements which are applicable to all sellers, whether importers, manufacturers, converters, distributors, dealers, or other vendors. Each has the definite responsibility of seeing to it that the merchandise as it is advertised by him or as it is introduced by him into the channels of trade or commerce is properly labeled and represented in keeping with the requirements of such Group I rules.

The labeling and other requirements respecting the fiber, yarn, thread, strands, fabric, or garment or other product covered by the rules apply to such merchandise in whatever form it may be sold or distributed.

In the case of finished garments or articles manufactured for distribution through the channels of trade to the ultimate consuming public without intermediate processing, it is deemed proper practice for manufacturers thereof not only to label the garment or article with proper disclosure of material content and other disclosure as is required by these rules, but also to cause the labeling (tagging or branding) to be done in such manner as to carry through the ordinary channels of trade to the ultimate consumer and be appropriate in the sale or resale of the garment or article to the consuming public, thereby rendering further or additional labeling as to material content unnecessary so long as the proper label, tag, or brand affixed by the manu-

* See page VIII for headnote applicable to Group I Rules.

facturer remains on the garment or article and the material content of the product has not been changed. This shall not, however, be construed as relieving dealers or other vendors of any of their responsibility under the rules of seeing to it that the garment or article bears a proper and appropriate label, brand, or tag disclosing the information required by these rules to be disclosed and that it is not falsely or deceptively labeled, nor otherwise marked, advertised, represented, or offered for sale in a manner contrary to the provisions of these rules.

RULE 1.

(a) *Silk Defined.*—Silk is the natural fiber derived from the cocoon of the silkworm.

(b) *Deceptive Passing Off of Silk.*—It is an unfair trade practice to cause any silk fiber, yarn, thread, strands, fabric, or garment or other product made therefrom, to be sold, offered for sale, distributed, advertised, described, branded, labeled, or otherwise represented: (1) as not being silk; or (2) as being something other than silk; or (3) without disclosure of the fact that such material or product is silk, made clearly and unequivocally in the invoices, in labels, tags, or brands attached to the merchandise, and in whatever advertising matter, sales promotional descriptions, or representations thereof may be used, however disseminated or published, where such nondisclosure has the capacity and tendency or effect of misleading or deceiving the purchasing or consuming public.

(c) It is an unfair trade practice to cause any fiber, yarn, thread, strands, fabric, garment, or other product, containing or purporting to contain silk of any kind in whole or in part, to be offered for sale, sold, or distributed under any conditions of deceptive concealment of the fiber content or under any other deceptive or misleading conditions or representations.

RULE 2. *Silk Noil.*

(a) *Silk Noil* is waste silk produced in the operations incident to manufacture of spun silk. The term "silk noil" as used in these rules, however, shall not be construed as including spun silk, except to the extent such spun silk is made of silk noil. For purposes of making disclosure, under these rules, as to content of product, such silk noil may be designated as "Silk Noil," "Noil Silk," "Silk Waste," or "Waste Silk."

(b) In offering for sale, selling, or distributing, or promoting the sale or distribution of, any fiber, yarn, thread, strands, fabric, or garment or other product, containing silk noil either in whole or in part, full and nondeceptive disclosure of the presence of such silk

noil should be made in labels, tags, or brands affixed to the merchandise and in the invoices and in such advertising matter, sales promotional descriptions, or representations as may be used in respect thereof, however disseminated or published; and it is an unfair trade practice to deceptively conceal the presence of such silk noil or to fail or refuse to make said disclosure, having the capacity and tendency or effect of thereby misleading or deceiving the purchasing or consuming public. In the use of the term "silk noil," "noil silk," "silk waste," or "waste silk," the words "noil" and "waste" shall not be misleadingly or deceptively minimized, obscured, remotely placed, or rendered inconspicuous.

RULE 3. *Pure Silk.*

(a) It is an unfair trade practice to use the term or phrase "Pure Silk," "All Silk," "Pure Dye Silk," or the distinctive term or phrase "Pure Dye" or the unqualified word "Silk," or any other word, term, phrase, designation, or representation of similar import, as descriptive of any fiber, yarn, thread, strands, fabric, or garment or other product containing the same, (1) the fiber content of which is not silk exclusively; or (2) which contains any metallic weighting whatsoever; or (3) which contains any loading or adulterating materials, or other foreign or added substance or material (except the necessary dyeing and/or finishing materials required to produce the color and finish of the product). Such necessary dyeing and/or finishing materials shall, however, in no case exceed 10% in the aggregate, except black, which shall not exceed 15% in the aggregate. These percentages shall be computed upon the weight of the silk in its finished state. Nothing in this rule shall be construed as permitting the use of dyeing or finishing materials, either within or in excess of such 10% and 15% limits, for the purpose or with the result of thereby deceptively loading the product with excess or unnecessary dyeing or finishing materials.

(b) Nothing in this rule shall prohibit the use of the term or phrase "Pure Silk," "Pure Dye Silk," or "Silk," in a truthful and nondeceptive manner, as descriptive of the silk content of a mixed fabric: *Provided*, Said content meets the requirements of the foregoing paragraph (a) of this Rule 3 and the requirements of Rule 7 as to mixed goods: *And provided further*, It is accurately and in immediate conjunction disclosed clearly and unequivocally that such term or phrase so employed is used as applying only to the silk content of such mixed fabric—such as, for example:

"Rayon and Pure Silk"

or

"Rayon and Silk"

or

"60%-Rayon, 40% Pure Dye Silk."

RULE 4. *Weighted Silk.*

(a) Full and nondeceptive disclosure of the presence of metallic weighting, together with the proportion or percentage thereof, in any silk or silk product of any kind, shall be made in labels, tags, or brands attached to the merchandise and in the invoices and in whatever advertising matter, sales promotional descriptions, or representations may be used in respect thereto, however disseminated or published, to the end that misrepresentation of the merchandise or deception of the purchasing or consuming public may be avoided and prevented; and it is an unfair trade practice (1) to fail or refuse to make such full and nondeceptive disclosure through the means stated and in conformity with the requirements of this rule; or (2) otherwise to deceptively conceal the presence of such metallic weighting or the percentage or proportion thereof.

(b) The percentage or proportion of such metallic weighting to be disclosed under this rule shall be that proportion or percentage which the total weight of such metallic substance bears to the total weight of the silk in its finished state; subject, however, to the allowance of a tolerance of five points' variation from such stated percentage or proportion to the extent the variation is due to unavoidable variations in processing and not to lack of reasonable effort to state the percentage or proportion accurately. The following are illustrative examples of the disclosure provided for in this rule:

"Silk, Weighted 25%"

or

"Silk with 25% Metallic Weighting"

or

"Silk (weighted 25%) and Rayon."

(c) Nothing in this rule, however, shall be construed as prohibiting the making of such disclosure as to weighting and the percentage thereof by truthfully and nondeceptively disclosing that the weighting is not over a certain percentage, or that the weighting in such parts of the product as consist of weighted silk ranges from a certain minimum to a certain maximum figure, such as, for example:

"Silk, Weighted up to 50%"

"Silk, Weighted not over 50%"

"Silk, Weighted between 25% and 50%"

"Silk with 25% to 50% Weighting"

"Silk, Weighted from 25% to 50%."

(d) In making disclosure under these rules as to weighting, the disclosure of the fact that the product, or respective part thereof, is weighted and of the percentage or proportion of weighting, shall be made plainly and unequivocally, also in immediate conjunction with

such representations of content as are used, and shall not be set forth in such manner as to be misleadingly or deceptively minimized, obscured, remotely placed, or rendered inconspicuous.

(e) In case any such product so weighted with metallic substance is silk noil, the fact that such is noil shall also be disclosed in accordance with the requirements of Rule 2 and in addition to said disclosure as to weighting materials—such as, for example:

"Silk Noil, Weighted 25%"

"Noil Silk with 25% Weighting."

RULE 5. *Special Finishing Materials, Excess Finishing Materials, Loading or Adulterating Materials.*

(a) This rule applies to nonfibrous materials other than metallic weighting provided for in Rule 4 and other than the necessary dyeing and/or finishing materials referred to in Rule 3.

(b) The presence of such nonfibrous materials which have been added to any fiber, yarn, thread, strands, or fabric shall be truthfully and nondeceptively disclosed in accordance with the following requirements of this rule, to the end that misunderstanding, confusion, and deception of the purchasing or consuming public may be avoided and prevented.

(c) In the case where such nonfibrous material has been added to the product as special finishing materials the product shall be designated and described in such manner as will clearly and nondeceptively disclose to the purchasing and consuming public that such added finishing materials are present in the product. The term "special finishing materials" as used in this rule means such finishing materials as are added to the product for the purpose and with the effect of thereby imparting certain useful properties to the product, such as water-repellent qualities, etc.

(d) In cases of fiber, yarn, thread, strands, or fabric where nonfibrous materials have been added to or are present in the product as excess dyeing or finishing materials, loading, or adulterating materials, full, clear, and nondeceptive disclosure of the presence of such excess dyeing or finishing materials, or loading or adulterating materials, and of the maximum percentage or proportion in which such materials are present, shall be made in tags, labels, or brands attached to the product, in the invoices, and in whatever advertising or trade promotional descriptions or representations may be used in respect to the product, however disseminated or published.

(e) It is an unfair trade practice to fail or refuse to make such disclosure provided for in this rule, such failure or refusal having the capacity and tendency or effect of misleading or deceiving the purchasing or consuming public; and it is an unfair trade practice

to omit or fail to take such other steps as may be necessary to avoid the sale or distribution of such products in the channels of trade or to the purchasing or consuming public under false, misleading, or deceptive representations or conditions.

RULE 6. *Terms "Silk," "Wool," "Linen," "Flax," "Cotton," etc.*

It is an unfair trade practice to use, or cause to be used, as descriptive of any textile merchandise, the word "silk" or word, term, or representation of similar import, either alone or in conjunction with the words "wool," "linen," "flax," "cotton," "rayon," or other term or representation, such as, for example, "Silk Rayon," "Rayon Silk," "Silk Linen," "Linen Silk," etc., so as to import or imply that the product is silk or contains silk or has the properties of silk, when such is not the fact. However, nothing in this rule shall prohibit the use of the words "silk," "rayon," "wool," "linen," "flax," or "cotton" in any truthful and nondeceptive designation or representation made in conformity with the requirements of Rule 7 as to disclosure of mixed goods.

RULE 7. *Mixed Goods.*

In the case of any yarn, thread, strands, fabric, or garment or other product made therefrom, containing a mixture of any kind of silk and other fiber or fibers, full and nondeceptive disclosure of the fiber content of such merchandise should be made in accordance with the hereinafter stated provisions of this rule, to the end that the purchasing and consuming public may be informed as to the contents of such merchandise and that deceptive concealment, misunderstanding, misrepresentation, and unfair practices in the marketing of such merchandise in the channels of trade and to the public may be avoided and prevented. And it is an unfair trade practice to conceal the presence of any fiber constituent of such merchandise, or to fail or refuse to make said disclosure of fiber constituents, having the capacity, tendency, or effect of misleading or deceiving the purchasing or consuming public. Such disclosure of the fiber content of said products, pursuant to this rule, shall be made by accurately designating and naming each constituent fiber thereof in the order of its predominance by weight, beginning with the largest single constituent, such as, for example, "Silk, Rayon, and Wool," for yarn, thread, strands, or fabric composed of silk, rayon, and wool and containing silk in larger proportion than either rayon or wool and containing rayon in greater proportion than wool; subject to the following:

(I) Said disclosure shall be made in labels, brands, or tags attached to the merchandise and in such advertising and sales promotional descriptions or representations of the product as may be used, however disseminated or published. Said disclosure shall also be made

in such other documents, passing from seller to purchaser, as may be necessary to fully inform purchasers of the fiber content of the merchandise and to avoid and prevent the sale or resale of the merchandise under deceptive or misleading conditions.

(II) In setting forth a disclosure of the names of the fiber contained in any such mixed product of two or more fibers, the respective name of any such fiber shall not be set forth in type or manner so disproportionately enlarged, emphasized, or conspicuously placed as thereby to have the capacity, tendency, or effect of misleading or deceiving the purchasing or consuming public into the belief that a greater proportion of such over-emphasized fiber is present than is in fact true; such as, for example, in printing or otherwise setting forth said illustrative disclosure of "Silk, Rayon, and Wool," the word "silk" or the word "wool" shall not be disproportionately enlarged or otherwise emphasized in such manner as to have the capacity, tendency, or effect of misleading or deceiving the purchasing or consuming public in respect to the proportion or effective character of the silk or the wool in such mixed product.

(III) In case the product contains silk noil, weighted silk, special or excess finishing materials or loading or adulterating materials, the disclosure thereof shall be made in conformity with the applicable provisions of the other Group I rules, namely, Rule 2 respecting silk noil, Rule 4 respecting weighted silk, Rule 5 respecting special or excess finishing materials, loading, or adulterating materials.

(IV) Where the fiber or fibers comprising at least 95% of the mixed product are disclosed not only by name as required by the foregoing provisions of this rule, but also with the percentage of each in the order of predominance by weight as recommended in Rule A, Group II, then the remaining 5% or less of the fiber content of such product may be designated and disclosed as "Other Fibers" or "Miscellaneous Fibers": *Provided*, Such 5% proportion or less is not definitely known to be composed of one fiber or readily ascertainable as consisting of but one fiber, but on the contrary is composed of fibers which may be of various kinds, the percentages or quantities of each of which are not definitely known or readily ascertainable: *And provided further*, That such fiber content designated or disclosed as "Other Fibers" or "Miscellaneous Fibers" is not otherwise misrepresented. Illustrative examples of the disclosure provided for under this rule are as follows: "50% Silk, 46% Rayon, 4% Other Fibers" or "55% Silk, 40% Wool, 5% Miscellaneous Fibers" for products composed of the respective stated percentages of silk, rayon, and wool and composed in the remainder of fibers the proportion or percentage of each of which is not definitely known or readily ascertainable, including such small additional amounts of silk or rayon

as may be present due to unavoidable variations in manufacturing processes.

(V) In making disclosure of fiber content under these rules by choosing to specifically name any particular fiber in any such mixed product which is present in the proportion of 5% or less by weight of the entire content, the name of the fiber shall be accompanied in immediate conjunction therewith by accurate and nondeceptive disclosure of the percentage or proportion in which said specifically named fiber is present, such as, for example, "2% Silk" or "2% Wool," to the end that the purchasing or consuming public may not be misled or deceived into the erroneous belief that said fiber is present in a greater or lesser proportion than is in fact true. Nothing in this rule shall be construed as permitting the concealment of the percentage in which any fiber is present above 5% where conditions or circumstances misleading or deceptive to the purchasing or consuming public may be produced by reason of such concealment.

(VI) In setting forth any item, name, statement, percentage, or other information required to be disclosed under this or any other rule hereof, the same shall be set forth clearly and unequivocally and not in type or manner so disproportionate, or so minimized, obscured, or remotely or inconspicuously placed, as to be misleading or deceptive to the purchasing or consuming public.

RULE 8. *Passing Off Merchandise as and for Silk.*

(a) It is an unfair trade practice to offer for sale, sell, distribute, describe, brand, label, advertise, or otherwise represent, directly or indirectly, any fiber, yarn, thread, strands, fabric, or garment or other product made therefrom, as being silk or as containing silk of any kind or as having any of the properties of silk, when such is not the fact.

(b) In the case of fiber, yarn, thread, strands, fabric, or garment or other product, not containing silk of any kind but which has been manufactured or processed in such manner as to simulate silk or which purports to contain silk, in whole or in part, the failure or refusal to make full and nondeceptive disclosure of the fiber content of such merchandise, in conformity with law and applicable rules and regulations thereunder, and so as to avoid and prevent deceptive concealment, confusion, misunderstanding, and misrepresentation, is an unfair trade practice.

RULE 9. *Deteriorated or Damaged Merchandise.*

In any case of merchandise, composed wholly or in part of silk, the character, quality, or value of which has become impaired through age, deterioration, or damage, it is an unfair trade practice in the sale or distribution of such merchandise to conceal such impairment for

the purpose or with the capacity and tendency or effect of misleading or deceiving the purchasing or consuming public in respect to the character, quality, value, or condition of such merchandise.

RULE 10. Encouraging or Promoting Misleading Merchandising Methods.

It is an unfair trade practice for any person, partnership, or corporation to induce, aid, or abet an importer, converter, manufacturer, distributor, dealer, or other person to cause any fiber, yarn, thread, strands, fabric, or garment or other product, containing or purporting to contain silk in whole or in part, to be advertised, represented, offered for sale, sold, or distributed through any means or devices or under any conditions which have the capacity and tendency or effect of causing, promoting, or aiding the marketing of any such merchandise in the channels of trade or to the consuming public under false, misleading, or deceptive circumstances or representations.

RULE 11. Word "Silk" as Part of Trade or Corporate Name.

(a) It is an unfair trade practice for any person, partnership, or corporation to use the word "silk," or word, term, or representation of similar import, as part of a trade or corporate name indicative of a silk business or silk products unless at least a substantial part of such business is devoted to silk or silk products and, as to any merchandise of said business which is not composed wholly of silk, full and nondeceptive disclosure is made, in immediate conjunction with such trade or corporate name, of the fact that such merchandise is not silk but is composed of or contains other named fibers.

(b) It is an unfair trade practice (1) to use the word "silk," or word, term, or representation of similar import, in any trade-mark indicative of silk, when the merchandise which bears such mark, or which is advertised, offered for sale, sold, or distributed thereunder, is not in fact composed of silk; or (2) to use said trade-mark in any other manner, or under any other condition, which is misleading or deceptive.

RULE 12. Misrepresentations as to Being a Manufacturer, Producer, or Importer.

(a) It is an unfair trade practice for any person, partnership, or corporation, by trade or corporate name or otherwise, to hold himself or itself out as being a manufacturer or producer of silk or silk products when such is not true in fact.

(b) It is an unfair trade practice for any person, partnership, or corporation in the conduct of business to represent himself or itself, directly or indirectly, as having or operating a silk business in whole or in part, or a silk department or branch, or as being an importer of silk, when such is not true in fact; or in any other manner to

misrepresent the character, nature, or status of the business of such person, partnership, or corporation.

RULE 13. Inducing or Abetting Violation of Rules.

(a) It is an unfair trade practice for any importer, manufacturer, producer, or organization to aid, abet, induce, or coerce a dealer, distributor, or other vendor to omit or refuse to make the disclosure as to content of merchandise required by the foregoing Group I rules or to otherwise engage in any of the unfair trade practices specified in such rules.

(b) It is an unfair trade practice for any dealer or other vendor or organization to induce, aid, abet, or coerce an importer, manufacturer, producer or other seller to omit or refuse to comply with the requirements of the foregoing Group I rules, or to otherwise engage in any unfair trade practice specified in such rules.

GROUP II*

RULE A. Disclosure of Proportions of Constituent Fibers in Mixed Goods.

The practice of making full and accurate disclosure of the proportions or percentages of the constituent fibers in mixed goods is approved as a proper practice to the end that salespersons, dealers, and other marketers of such products may have accurate information of the fiber content thereof and may, in turn, correctly inform the purchasing and consuming public, thereby avoiding confusion, misunderstanding, or misrepresentation as to the nature or content of such products. Any action taken in following this rule should be consonant with the requirements of the foregoing Group I rules. In the case where all fibers present are listed and disclosed by name, together with the percentage in which each is present, a tolerance of not to exceed 3% variation from the stated percentages may be allowed to the extent that such variation is due to unavoidable variations in manufacturing processes and not to lack of reasonable effort to state such percentages accurately.

RULE B. Terms Descriptive of Silk Fabrics or Relating to Weaves or Textures.

Subject to and in conformity with the requirements of the foregoing Group I rules, the practice of truthfully qualifying by the word "silk" all words, terms, phrases, or representations which mean silk or are associated in the minds of the purchasing or consuming public with fabrics composed of silk is recommended as a desirable practice. For example: "silk chiffon," "silk crepe," "silk satin," "silk taffeta," etc.

* See page VIII for headnote applicable to Group II Rules.

RULE C. Information as to Treatment and Care of Product.

The practice by producers, manufacturers, and distributors, of furnishing and disseminating, through tags, labels, advertisements, or other publicity, accurate information as to the proper treatment, care, and cleaning of the products covered by these rules is approved and recommended as a desirable practice to follow in the interest of enabling consumers to obtain and enjoy full benefit of the desirable qualities and services of such products.

Promulgated by the Federal Trade Commission November 4, 1938.

TRADE PRACTICE RULES

FOR THE

BABY CHICK INDUSTRY

PROMULGATED DECEMBER 31, 1938

STATEMENT BY THE COMMISSION

Trade practice rules for the Baby Chick Industry, as herein set forth, are promulgated by the Federal Trade Commission under its trade practice conference procedure.

The general purpose of the rules is to foster and promote fair competitive conditions and the protection of the purchasing and consuming public, and to this end to eliminate and prevent misrepresentation, deceptive concealment, and other unfair methods of competition or unfair or deceptive acts or practices.

In the course of the proceedings an industry conference was held in St. Paul, Minnesota, under the Commission's auspices, and proposed trade practice rules were submitted by members of the industry. Subsequently, tentative action was taken by the Commission on the rules so submitted and a draft of proposed rules was made available upon public notice of at least fifteen days, in pursuance of which all interested and affected parties were afforded opportunity to present such pertinent facts, suggestions, or objections as they desired and to be heard in respect to the proposed rules. At the public hearing held in Washington, all matters submitted orally or in writing were received and filed in the proceeding.

Thereafter, and upon consideration of the entire matter, final action was taken and the rules in the form appearing herein under Group I and Group II were respectively approved and received by the Commission.

The rules for the Baby Chick Industry herein promulgated supersede and replace prior rules for the industry as published by the Federal Trade Commission on November 25, 1933.

THE RULES**GROUP I***

Definition.—The term "baby chicks" as used in these rules shall be understood as including turkey poults, goslings, ducklings, or other live young poultry to be raised for breeding purposes or for the production of eggs and other poultry products.

* See page VIII for headnote applicable to Group I Rules.

RULE 1. *Misrepresentation of Products.*

It is an unfair trade practice, in the course of or in connection with the offering for sale, sale, or distribution of baby chicks, to make or publish, or cause to be made or published, directly or indirectly, any false, misleading, or deceptive statement or representation (whether in the form of advertisement, guarantee, warranty, testimonial, endorsement, depiction, illustration, or other form of representation, however disseminated or published):

- (a) Concerning the grade, quality, quantity, breed, pedigree, type, sex, sexing, quick maturity, uniform development, character, nature, origin, weight, color, or size of such baby chicks; or
- (b) Concerning the production, sale, or distribution of any such baby chicks; or
- (c) Concerning the purported supervision, endorsement, or approval of any poultry breeding, hatching, or other operation by Federal, State, or other authority; or
- (d) Concerning any other matter in relation to such baby chicks.

RULE 2. *Deceptive Concealment of Material Facts.*

In advertising, offering for sale, or selling baby chicks, it is an unfair trade practice for any member of the industry to conceal or fail or refuse to disclose any material facts for the purpose or with the effect of thereby misleading or deceiving purchasers, as for example:

- (a) Filling baby chick orders with cockerels which have been obtained from sexed chicks or from other sources without having disclosed to the purchaser at the time of sale the fact that the baby chicks delivered are cockerels;
- (b) Adding surplus cockerel chicks to so-called "straight-run" chicks and offering for sale, selling, or delivering same to customers without informing the respective purchasers of the fact that such surplus or added cockerels have been included and without obtaining such purchasers' consent thereto.

(NOTE—The above examples are but a few illustrations of the scope of Rule 2.)

RULE 3. (a) *Misuse of Words "Guaranteed to Live," Etc.;* (b) *Use of Deceptive Guarantees as to Livability of Baby Chicks, Etc.*

(a) It is an unfair trade practice to advertise, guarantee, describe, or otherwise represent that baby chicks sold or offered for sale are "guaranteed to live," or to make similar statements or representations, with the purpose or with the tendency and capacity or effect of misleading or deceiving purchasers or prospective purchasers into the erroneous belief that the said baby chicks possess extraordinary stamina or other qualities which prevent disease or death.

(b) It is an unfair trade practice to make or publish, or cause to be made or published, directly or indirectly, any false, misleading, or deceptive statement, guarantee, warranty, or other representation concerning the livability, health, or stamina of baby chicks sold or offered for sale.

RULE 4. *Misrepresentation as to Yields of Eggs.*

It is an unfair trade practice to advertise, guarantee, describe, or otherwise represent, directly or indirectly, that very high yields of eggs are received from all flocks of a particular seller or producer when such is not the fact, or when such statement or representation is true only as to a small percentage or proportion of his flocks.

RULE 5. *Misrepresentation as to Blood Testing, Etc.*

(a) It is an unfair trade practice to advertise, guarantee, describe, or otherwise represent, directly or indirectly, that all baby chicks or other poultry sold or offered for sale have been blood tested, pullorum tested, vaccinated, inoculated, or otherwise treated for any disease when such is not the fact, or when only a portion of the flocks supplying the eggs have been so treated or tested during the current season.

(b) It is an unfair trade practice to use any disease-control term such as "pullorum tested," "blood tested," or the like, in advertising or otherwise, in such manner as to have the tendency and capacity or effect of misleading or deceiving purchasers or prospective purchasers into the belief that officially approved methods have been used in making these tests, when such is not the fact.

RULE 6. *Deceptive Substitution of Inferior Chicks for Those Ordered.*

It is an unfair trade practice to advertise, guarantee, describe, or otherwise represent that the flocks of a particular seller or producer possess certain good qualities, such as ability to resist disease or to produce high yields of eggs, or the like, and then upon receipt of customers' orders for baby chicks from the flocks advertised, filling same from flocks of an inferior quality, without informing the purchasers of such substitution.

RULE 7. *Deceptive Sale of Chicks at Purported Bargain Prices.*

It is an unfair trade practice to sell or offer to sell baby chicks of poor grade or quality at so-called bargain prices or at any other prices, through advertisements or otherwise, from a farm or hatchery advertised or bearing a reputation for high-grade production, without informing purchasers or prospective purchasers as to the poor grade or quality of such chicks and with the tendency and capacity or effect of thereby misleading or deceiving them into the erroneous belief that they are receiving a bargain when such is not the fact.

RULE 8. Misrepresentation as to Egg Production Qualities of Poultry.

In the case of a producer of baby chicks mating with his flocks a limited number of males having a record for transmitting high egg production qualities while mating therewith other males having no such record, it is an unfair trade practice to offer baby chicks for sale from his flocks, through advertising or otherwise, in such manner as to have the tendency and capacity or effect of misleading or deceiving purchasers or prospective purchasers into the belief that all of such chicks possess the same high egg production qualities as the said males of high pedigree, or that such flocks have been mated exclusively with males having a record for transmitting high egg production qualities, when such is not the fact.

RULE 9. Deceptive Use of "Leaders."

It is an unfair trade practice to offer for sale, advertise, or otherwise represent baby chicks as being of a certain high grade or quality, offered at claimed "bargain prices" and under circumstances which have the capacity and tendency or effect of misleading or deceiving purchasers or prospective purchasers into the belief that an adequate supply of such chicks is available to purchasers at such prices, or that all chicks so offered for sale or sold under such representations and conditions are of the same high grade or quality, when such is not true in fact.

RULE 10. Misuse of Words "Hatchery," "Chickery," "Chick Nursery," "Farm," "Poultry Farm," "Breeding Farm," "Incubators," Etc.

(a) It is an unfair trade practice for any person, partnership, or corporation, by trade or corporate name, through advertising, or otherwise, to hold himself or itself out as owning or operating a hatchery, chickery, chick nursery, farm, poultry farm, breeding farm, incubators, or the like, when such is not the fact.

(b) In the sale or offering for sale of baby chicks, through advertising or otherwise, it is an unfair trade practice for any person, partnership, or corporation to represent that such chicks have been produced by the said person, partnership, or corporation, or have been produced under certain conditions, when such is not the fact.

RULE 11. Deceptive Guarantees or Representations as to Percentage of Chicks Alive at Buyer's Destination.

It is an unfair trade practice to make false, misleading, or deceptive guarantees, warranties, or other representations to the effect that a certain percentage of the chicks shipped will be alive at buyer's destination, and then fail to adjust losses pursuant to representations made, with the purpose or with the tendency and capacity or effect of misleading or deceiving purchasers or prospective purchasers.

RULE 12. Misrepresenting Chicks Sold at Auction, Through Shipment to Fictitious Consignees, Through Agents, Salesmen, or Dealers, Etc.

It is an unfair trade practice to cause baby chicks to be sold under deceptive or misleading conditions, at auction sales, through shipment to fictitious consignees, or through agents, salesmen, dealers, or otherwise, whether by means of false, misleading, or deceptive statements or representations or by means of deceptive concealment of material facts.

RULE 13. Deceptive Testimonials.

It is an unfair trade practice for any member of the industry to publish or use misleading or deceptive testimonials regarding exceptional results alleged to have been obtained by buyers of his chicks, which testimonials are so worded as to have the tendency and capacity or effect of inducing purchasers or prospective purchasers to believe that all of such member's chicks may be expected to produce similar results for all buyers when such is not the fact.

RULE 14. Misuse of Word "Free."

The use of the word "free," or the equivalent thereof, where not properly or fairly qualified when the article is in fact not free, with the tendency or capacity to mislead or deceive purchasers or prospective purchasers, is an unfair trade practice.

RULE 15. Misrepresenting Chicks as from Stock Entered in Egg-Laying Contests or Poultry Shows, Etc.

It is an unfair trade practice to advertise, guarantee, describe, or otherwise represent that baby chicks sold or offered for sale are from, or are closely related to, stock entered in egg-laying contests or poultry shows, or the like, when such is not the fact.

RULE 16. Misuse of Terms "Trapnest," "Trapped," Etc.

It is an unfair trade practice to use the terms "trapnest," "trapped," or the like, in such manner as to have the tendency and capacity or effect of misleading or deceiving purchasers or prospective purchasers into the belief that all baby chicks sold or offered for sale are hatched from eggs produced by hens that are actually being trapped, or have been trapped for at least one year, when such is not the fact.

RULE 17. Deceptive Depictions.

It is an unfair trade practice to use photographs, cuts, engravings, illustrations, or pictorial or other depictions or devices, in catalogues, sales literature, or advertisements, or otherwise, in such manner as to have the capacity and tendency or effect of misleading or deceiving purchasers or prospective purchasers as to the size, importance, or location of the premises occupied by a member of the industry, as to

such member's equipment, as to his breeding flocks or poultry products, or as to any phase of his poultry hatching, breeding, or other operations.

RULE 18. *Deceptive Representations as to Earnings, Etc.*

It is an unfair trade practice to make false, misleading, or deceptive statements or representations regarding opportunities for making money or actual or probable earnings of agents or dealers handling hatching eggs, baby chicks, or other poultry, or of purchasers raising baby chicks or other poultry, which products are being offered for sale or sold by a member of the industry.

RULE 19. *Deception as to Transportation Charges.*

(a) It is an unfair trade practice to sell or offer to sell baby chicks, through advertising or otherwise, in such manner as to mislead or deceive purchasers or prospective purchasers into the belief that the prices quoted for such chicks are the prepaid or delivered prices when such is not the fact.

(b) It is an unfair trade practice, by failing correctly to inform customers or by other deception, to cause purchasers to believe that transportation costs will not be charged against them in C. O. D. charges or otherwise, when such is not true in fact.

RULE 20. *Publishing or Circulating of False or Misleading Price Quotations, Price Lists, Etc.*

The publishing or circulating by any member of the industry of false or misleading price quotations, price lists, terms, or conditions of sale, with the tendency and capacity or effect of misleading or deceiving purchasers or prospective purchasers, is an unfair trade practice.

RULE 21. *Misrepresenting Offer as "Special."*

It is an unfair trade practice to represent an offer as "special" when it is in fact a "regular" offer.

RULE 22. *Fictitious Prices.*

Offering baby chicks for sale at prices purported to be reduced from what are in fact fictitious prices, or offering such chicks for sale at a purported reduction in price when such purported reduction is in fact fictitious, with the tendency and capacity or effect of misleading or deceiving purchasers or prospective purchasers, is an unfair trade practice.

RULE 23. *Misrepresenting Offer as Limited to Time, Etc.*

It is an unfair trade practice to represent an offer to be limited as to time or otherwise when such is not the fact.

RULE 24. *Bogus Independents.*

It is an unfair trade practice to sell or offer to sell industry products through a pretended independent concern in such manner as to mislead or deceive purchasers or prospective purchasers into the erroneous belief that such concern is independent and in competition with that member of the industry owning or controlling such concern.

RULE 25. *Schemes Involving Lottery, Misrepresentation, or Fraud.*

The offering or giving of prizes, premiums, or gifts in connection with the sale of industry products, or as an inducement thereto, by any scheme which involves lottery, misrepresentation, or fraud is an unfair trade practice.

RULE 26. *Misuse of Word "Guarantee," Etc.*

It is an unfair trade practice to use the word "guarantee," or any other word, expression, or representation of similar import, in such manner as to have the tendency and capacity or effect of misleading or deceiving purchasers or prospective purchasers.

RULE 27. *Defamation of Competitors or Disparagement of Their Products.*

The defamation of competitors by falsely imputing to them dishonorable conduct, inability to perform contracts, questionable credit standing, or by other false representations, or the false disparagement of the grade, quality, or manufacture of the products of competitors, or of their business methods, selling prices, values, credit terms, policies, or services, is an unfair trade practice.

RULE 28. *"Loss Leaders."*

The practice of selling any product of the industry below the seller's cost as a "loss leader" to induce the purchase of any other product of the industry, the sale of the latter being used to recoup the loss sustained on the "loss leader" product so sold, with the tendency or capacity to mislead or deceive purchasers or prospective purchasers, is an unfair trade practice.

RULE 29. *Inducing Breach of Contract.*

Inducing or attempting to induce the breach of existing lawful contracts between competitors and their customers or their suppliers by any false or deceptive means whatsoever, or interfering with or obstructing the performance of any such contractual duties or services by any such means, with the purpose and effect of unduly hampering, injuring, or prejudicing competitors in their businesses, is an unfair trade practice.

RULE 30. *Enticing Away the Employees of Competitors.*

Wilfully enticing away the employees of competitors, with the pur-

pose and effect of unduly hampering, injuring, or prejudicing competitors in their businesses, is an unfair trade practice.

RULE 31. Espionage.

The securing of information from competitors concerning their businesses by false or misleading statements or representations or by false impersonation of one in authority and the wrongful use thereof to unduly hinder or stifle the competition of such competitors is an unfair trade practice.

RULE 32. Coercing Purchase of One Product as a Prerequisite to the Purchase of Other Products.

The practice of coercing the purchase of one or more products as a prerequisite to the purchase of one or more other products, where the effect may be to substantially lessen competition or tend to create a monopoly or to unreasonably restrain trade, is an unfair trade practice.

RULE 33. Consignment Selling.

It is an unfair trade practice for any member of the industry to use the practice of shipping goods to dealers or distributors on consignment or pretended consignment for the purpose and with the effect of artificially clogging trade outlets and unduly restricting competitors' use of said trade outlets in getting their goods to consumers through regular channels of distribution, or with such purpose to entirely close said trade outlets to such competitors so as to substantially lessen competition or tend to create a monopoly or to unreasonably restrain trade: *Provided, however*, That nothing herein shall be construed or used as restricting or preventing consignment shipping or marketing of commodities in good faith, and without artificial interference with competitors' use of the usual channels of distribution in such manner as thereby to suppress competition or restrain trade.

RULE 34. Selling Below Cost.

The selling or offering for sale of baby chicks or "started chicks" below the seller's cost, with the intent and with the effect of injuring a competitor and where the effect may be to substantially lessen competition or tend to create a monopoly or unreasonably restrain trade, is an unfair trade practice; all elements recognized by good accounting practice as proper elements of such cost shall be included in determining cost under this rule.

RULE 35.

(a) *Prohibited Discriminatory Prices, or Rebates, Refunds, Discounts, Credits, Etc.,¹ Which Effect Unlawful Price Discrimination.*—It is an unfair trade practice for any member of the industry engaged in commerce,² in the course of such commerce, to grant or allow, secretly or openly, directly or indirectly, any rebate, refund, discount,

credit, or other form of price differential,¹ where such rebate, refund, discount, credit, or other form of price differential effects a discrimination in price between different purchasers of goods of like grade and quality, where either or any of the purchases involved therein are in commerce,² and where the effect thereof may be substantially to lessen competition or tend to create a monopoly in any line of commerce,² or to injure, destroy, or prevent competition with any person who either grants or knowingly receives the benefit of such discrimination or with customers of either of them: *Provided, however*—

(1) That the goods involved in any such transaction are sold for use, consumption, or resale within any place under the jurisdiction of the United States;

(2) That nothing herein contained shall prevent differentials which make only due allowance for differences in the cost of manufacture, sale, or delivery resulting from the differing methods or quantities in which such commodities are to such purchasers sold or delivered;

(3) That nothing herein contained shall prevent persons engaged in selling goods, wares, or merchandise in commerce² from selecting their own customers in bona fide transactions and not in restraint of trade;

(4) That nothing herein contained shall prevent price changes from time to time where made in response to changing conditions affecting either (a) the market for the goods concerned, or (b) the marketability of the goods, such as, but not limited to, actual or imminent deterioration of perishable goods, obsolescence of seasonal goods, distress sales under court process, or sales in good faith in discontinuance of business in the goods concerned.

(b) *Prohibited Brokerage and Commissions.*—It is an unfair trade practice for any member of the industry engaged in commerce,² in the course of such commerce, to pay or grant, or to receive or accept, anything of value as a commission, brokerage, or other compensation, or any allowance or discount in lieu thereof, except for services rendered in connection with the sale or purchase of goods, wares, or merchandise, either to the other party to such transaction or to an agent, representative, or other intermediary therein where such intermediary is acting in fact for or in behalf, or is subject to the direct or indirect control, of any party to such transaction other than the person by whom such compensation is so granted or paid.

(c) *Prohibited Advertising or Promotional Allowances, Etc.*—It is an unfair trade practice for any member of the industry engaged in

¹ Paragraph (a) of Rule 35 shall not be construed as embracing practices prohibited by paragraphs (b), (c), and (d) of this rule.

² See footnote, p. 460.

commerce² to pay or contract for the payment of advertising or promotional allowances or any other thing of value to or for the benefit of a customer of such member in the course of such commerce as compensation or in consideration for any services or facilities furnished by or through such customer in connection with the processing, handling, sale, or offering for sale of any products or commodities manufactured, sold, or offered for sale by such member, unless such payment or consideration is available on proportionally equal terms to all other customers competing in the distribution of such products or commodities.

(d) *Prohibited Discriminatory Services or Facilities.*—It is an unfair trade practice for any member of the industry engaged in commerce² to discriminate in favor of one purchaser against another purchaser or purchasers of a commodity bought for resale, with or without processing, by contracting to furnish or by furnishing, or by contributing to the furnishing of, any services or facilities connected with the processing, handling, sale, or offering for sale of such commodity so purchased upon terms not accorded to all purchasers on proportionally equal terms.

(e) *Illegal Price Discrimination.*—It is an unfair trade practice for any member of the industry or other person engaged in commerce,² in the course of such commerce, to discriminate in price in any other respect contrary to Section 2 of the Clayton Act as amended by the Act of Congress approved June 19, 1936 (Public, No. 692, 74th Congress), or knowingly to induce or receive a discrimination in price which is prohibited by such section as amended.

RULE 36. Aiding or Abetting Use of Unfair Trade Practices.

For any member of the industry knowingly to aid or abet another member, or any other person, firm, or corporation, in the use of unfair trade practices, is an unfair trade practice.

GROUP II*

RULE A.

The industry condemns the practice of disposing of baby chicks by shipping them to fictitious consignees or without an order or other consent of the consignee, necessitating the sale of such undeliverable shipments at public auction by agents of the common carrier in order to secure payment for transportation costs. Such practice is deemed by the industry to be harmful to the chicks and to facilitate the spread of disease.

RULE B.

The industry condemns the practice of failing to give proper notice

² See footnote, p. 460.

* See page VIII for headnote applicable to Group II Rules.

to purchasers of baby chicks of any change in the shipping schedule of an order thereby causing inconvenience and loss to purchasers.

RULE C.

The industry condemns the practice of failing to ship baby chicks to customers as promptly as has been agreed upon, which practice frequently results in injury to the chicks and inconvenience and loss to customers.

RULE D.

The industry approves the practice of handling business disputes between members of the industry and their customers in a fair and reasonable manner, coupled with a spirit of moderation and good will, and every effort should be made by the disputants themselves to compose their differences. If unable to do so they should, if possible, submit these disputes to arbitration.

RULE E.

Lawful contracts are business obligations which should be performed in letter and in spirit. The repudiation of contracts by sellers on a rising market or by buyers on a declining market is condemned by the industry.

A Committee on Trade Practices is hereby created by the industry to cooperate with the Federal Trade Commission and to perform such acts as may be legal and proper to put these rules into effect.

Promulgated by the Federal Trade Commission December 31, 1938.

NOTE: Proceedings to revise and extend the rules for this industry had been undertaken when this book went to press.

TRADE PRACTICE RULES
FOR THE
PAINT AND VARNISH BRUSH MANUFACTURING
INDUSTRY

PROMULGATED JANUARY 14, 1939

STATEMENT BY THE COMMISSION

Trade practice rules for the Paint and Varnish Brush Manufacturing Industry, as herein set forth, are promulgated by the Federal Trade Commission under its trade practice conference procedure.

The products of the industry to which the rules relate consist of the various types and kinds of brushes used in painting and decorating, not only for the application of paint, varnish, lacquer, and calcimine, but also for other purposes and uses in applying decorative or protective materials. The total capital investment for the manufacture of such brushes is said to be approximately \$10,000,000, and the value of annual sales about \$15,000,000.

In the course of the proceedings an industry conference was held in Atlantic City, New Jersey, under the Commission's auspices, and proposed trade practice rules were submitted by members of the industry. Subsequently, tentative action was taken by the Commission on the rules so submitted and a draft of proposed rules was made available, upon public notice, to all interested and affected parties, affording them opportunity to present their views, suggestions, or objections, if any, and to be heard in respect to such rules. Accordingly, hearing was held in Washington, and all matters submitted orally and in writing were received and given due consideration.

Thereafter, and upon consideration of the entire matter, final action was taken and the rules in the form appearing herein under Group I and Group II were respectively approved and received by the Commission.

THE RULES

GROUP I*

Definitions.—The term "products of the industry" and the word "brushes" as used in these rules embrace all types of brushes manufactured in the industry for use in applying paint, varnish, lacquer, calcimine, or other similar decorative or protective materials.

The term "bristle" as used in these rules is not to be construed as including any hair, fiber, or material other than the bristle of swine.

* See page VIII for headnote applicable to Group I Rules.

RULE 1. *Misrepresentation of Industry Products.*

It is unfair trade practice to make or publish, or cause to be made or published, directly or indirectly, any false, misleading, or deceptive statement or representation, by way of advertisement or otherwise, concerning the grade, quality, quantity, use, size, material, content, origin, preparation, manufacture, or distribution of any products of the industry or concerning any component of such products, or in any other material respect.

RULE 2. *Misbranding of Industry Products.*

(a) The marking or branding of brushes with the words "All Bristle," "100% Bristle," "Pure Bristle," or "All Pure Bristle," or with word, term, or representation of similar import or meaning, when such brushes are in fact composed in whole or in part of material or materials other than bristle, or the use of the word "bristle" in any manner having the tendency and capacity or effect of misleading or deceiving the purchasing or consuming public with respect to the bristle content of such brushes, is an unfair trade practice.

(b) The deceptive marking or branding of brushes with respect to the grade, quality, quantity, use, size, material, content, origin, preparation, manufacture, or distribution thereof, or in any other material respect, is an unfair trade practice.

RULE 3. *Disclosure of Composition.*

It is an unfair trade practice to sell, offer for sale, or distribute any brush the brushing part of which is composed, in whole or in part, of any material which by reason of its natural appearance or as a result of special processing simulates bristle, without clear and non-deceptive disclosure of the true composition thereof, where failure to so disclose the same has the tendency and capacity or effect of misleading or deceiving the purchasing or consuming public.

(a) Such disclosure should be made by branding, stamping, or otherwise marking the handle or ferrule of the brush with the name of each of the constituent materials of the brushing part thereof in the order of its predominance.

ILLUSTRATION.—A brush composed of 60% horsehair and 40% bristle should be marked "Horsehair and Bristle," or "60% Horsehair and 40% Bristle."

Provided, however, (1) that the name of any such constituent material shall not be set forth in type or manner so inconspicuous, remotely placed, or disproportionately minimized as thereby to have the tendency, capacity, or effect of misleading or deceiving the purchasing or consuming public in respect to the propor-

tion of such material contained therein, or in any other respect, and

(2) when bristle as a material is not contained therein in a substantial quantity, the percentage in which such material is present should be specifically stated, to the end that purchasers may not be misled or deceived into the belief that this material is present in greater proportion than is in fact true.

ILLUSTRATION.—A brush composed of 90% horsehair and 10% bristle should be marked "Horsehair and 10% Bristle" or "90% Horsehair and 10% Bristle."

RULE 4. *False Invoicing.*

Withholding from or inserting in invoices any statements or information by reason of which omission or insertion a false record is made, wholly or in part, of the transactions represented on the face of such invoices, with the purpose or effect of thereby misleading or deceiving purchasers, prospective purchasers, or the consuming public, is an unfair trade practice.

RULE 5. *Inducing Breach of Contract.*

Inducing or attempting to induce the breach of existing lawful contracts between competitors and their customers or their suppliers by any false or deceptive means whatsoever, or interfering with or obstructing the performance of any such contractual duties or services by any such means, with the purpose and effect of unduly hampering, injuring, or prejudicing competitors in their businesses, is an unfair trade practice.

RULE 6. *Substitution of Products.*

The practice of shipping or delivering products which do not conform to samples submitted, to specifications upon which the sale is consummated, or to representations made prior to securing the order, without the consent of the purchasers to such substitutions and with the tendency, capacity, or effect of misleading or deceiving purchasers, prospective purchasers, or the consuming public, is an unfair trade practice.

RULE 7. *Commercial Bribery.*

It is an unfair trade practice for a member of the industry directly or indirectly to give or offer to give, or permit or cause to be given, money or anything of value to agents, employees, or representatives of customers or prospective customers, or to agents, employees, or representatives of competitors' customers or prospective customers, without the knowledge of their employers or principals, as an inducement to influence their employers or principals to purchase or contract to purchase products manufactured or sold by such industry member or

the maker of such gift or offer or to influence such employers or principals to refrain from dealing in the products of competitors or from dealing or contracting to deal with competitors.

RULE 8. *Imitation of Trade-marks, Etc.*

The imitation or simulation of the trade-marks, trade names, labels, or brands of competitors, with the purpose or with the tendency, capacity, or effect of misleading or deceiving purchasers, prospective purchasers, or the consuming public, is an unfair trade practice.

RULE 9. *Use of the Word "Free."*

The use of the word "free" where not properly or fairly qualified when the article is in fact not free, with the tendency or capacity to mislead or deceive purchasers, prospective purchasers, or the consuming public, is an unfair trade practice.

RULE 10. *Consignment Shipping.*

It is an unfair trade practice for any member of the industry to use the practice of shipping goods on consignment or pretended consignment for the purpose and with the effect of artificially clogging trade outlets and unduly restricting competitors' use of said trade outlets in getting their goods to consumers through regular channels of distribution, or with such purpose to entirely close said trade outlets to such competitors so as to substantially lessen competition or tend to create a monopoly or to unreasonably restrain trade: *Provided, however,* That nothing herein shall be construed or used as restricting or preventing consignment shipping or marketing of commodities in good faith and without artificial interference with competitors' use of the usual channels of distribution in such manner as thereby to suppress competition or restrain trade.

RULE 11. *Use of "Loss Leaders."*

The practice of selling any product of the industry below the seller's cost as a "loss leader" to induce the purchase of any other product of the industry, the sale of the latter being used to recoup the loss sustained on the "loss leader" product so sold, with the tendency or capacity to mislead or deceive purchasers, prospective purchasers, or the consuming public, is an unfair trade practice.

RULE 12.

(a) *Prohibited Discriminatory Prices, or Rebates, Refunds, Discounts, Credits, Etc.,¹ Which Effect Unlawful Price Discrimination.*—It is an unfair trade practice for any member of the industry engaged in commerce,² in the course of such commerce, to grant or allow, secretly or openly, directly or indirectly, any rebate, refund, discount, credit, or other form of price differential,¹ where such rebate, refund,

¹ Paragraph (a) of Rule 12 shall not be construed as embracing practices prohibited by paragraphs (b), (c), and (d) of this rule.

² See footnote, p. 460.

discount, credit, or other form of price differential effects a discrimination in price between different purchasers of goods of like grade and quality, where either or any of the purchases involved therein are in commerce,² and where the effect thereof may be substantially to lessen competition or tend to create a monopoly in any line of commerce,² or to injure, destroy, or prevent competition with any person who either grants or knowingly receives the benefit of such discrimination or with customers of either of them: *Provided, however*—

(1) That the goods involved in any such transaction are sold for use, consumption, or resale within any place under the jurisdiction of the United States;

(2) That nothing herein contained shall prevent differentials which make only due allowance for differences in the cost of manufacture, sale, or delivery resulting from the differing methods or quantities in which such commodities are to such purchasers sold or delivered;

(3) That nothing herein contained shall prevent persons engaged in selling goods, wares, or merchandise in commerce² from selecting their own customers in bona fide transactions and not in restraint of trade;

(4) That nothing herein contained shall prevent price changes from time to time where made in response to changing conditions affecting either (a) the market for the goods concerned, or (b) the marketability of the goods, such as, but not limited to, actual or imminent deterioration of perishable goods, obsolescence of seasonal goods, distress sales under court process, or sales in good faith in discontinuance of business in the goods concerned.

(b) *Prohibited Brokerage and Commissions.*—It is an unfair trade practice for any member of the industry engaged in commerce,² in the course of such commerce, to pay or grant, or to receive or accept, anything of value as a commission, brokerage, or other compensation, or any allowance or discount in lieu thereof, except for services rendered in connection with the sale or purchase of goods, wares, or merchandise, either to the other party to such transaction or to an agent, representative, or other intermediary therein where such intermediary is acting in fact for or in behalf, or is subject to the direct or indirect control, of any party to such transaction other than the person by whom such compensation is so granted or paid.

(c) *Prohibited Advertising or Promotional Allowances, Etc.*—It is an unfair trade practice for any member of the industry engaged in

² See footnote, p. 460.

commerce² to pay or contract for the payment of advertising or promotional allowances or any other thing of value to or for the benefit of a customer of such member in the course of such commerce as compensation or in consideration for any services or facilities furnished by or through such customer in connection with the processing, handling, sale, or offering for sale of any products or commodities manufactured, sold, or offered for sale by such member, unless such payment or consideration is available on proportionally equal terms to all other customers competing in the distribution of such products or commodities.

(d) *Prohibited Discriminatory Services or Facilities.*—It is an unfair trade practice for any member of the industry engaged in commerce² to discriminate in favor of one purchaser against another purchaser or purchasers of a commodity bought for resale, with or without processing, by contracting to furnish or by furnishing, or by contributing to the furnishing of, any services or facilities connected with the processing, handling, sale, or offering for sale of such commodity so purchased upon terms not accorded to all purchasers on proportionally equal terms.

(e) *Illegal Price Discrimination.*—It is an unfair trade practice for any member of the industry or other person engaged in commerce,² in the course of such commerce, to discriminate in price in any other respect contrary to Section 2 of the Clayton Act as amended by the Act of Congress approved June 19, 1936 (Public, No. 692, 74th Congress), or knowingly to induce or receive a discrimination in price which is prohibited by such section as amended.

RULE 13. *Discriminatory Returns.*

It is an unfair trade practice for any member of the industry, engaged in commerce,² to discriminate in favor of one customer-purchaser against another customer-purchaser of brushes, bought from such member of the industry for resale, by contracting to furnish or furnishing in connection therewith, *upon terms not accorded to all customer-purchasers on proportionally equal terms*, the service or facility whereby such favored purchaser is accorded the privilege of returning brushes so purchased and receiving therefor credit or refund of purchase price: *Provided, however*, Nothing in any of the rules herein shall prohibit or be used to prevent the return of merchandise by purchaser, for credit or refund of purchase price, when and because such merchandise has been falsely or deceptively labeled, branded, or represented, or when and because such merchandise is defective in material, workmanship, or in any other respect contrary to warranty or purchase contract.

² See footnote, p. 460.

GROUP II*

RULE A. *Return of Merchandise.*

The practice, by members of the industry, of selling merchandise and later permitting the purchaser to return it for credit or refund of purchase price, without just cause, creates waste and loss, increases the cost of doing business, to the detriment of both the industry and the public, and is condemned by the industry, subject, however, to requirements and limitations set forth in the provisions of Rule 13 of Group I, herein.

RULE B. *Repudiation of Contracts.*

Lawful contracts are business obligations which should be performed in letter and in spirit. The repudiation of contracts by sellers on a rising market or by buyers on a declining market is condemned by the industry.

RULE C. *Dissemination of Credit Information.*

The industry records its approval of distributing to its members information covering delinquent and slow accounts insofar as this may be lawfully done.

RULE D. *Filing of Trade-marks, Etc.*

To avoid confusion within the industry, it is recommended that each member thereof voluntarily file with some agency designated by the industry all trade-marks, trade names, labels, or brands used by such member and that such information be made equally available to all members of the industry and to the public.

RULE E. *All-bristle Brushes.*

The industry records its approval of the marking or branding of all brushes composed wholly of bristle with the words "All Bristle," "100% Bristle," "Pure Bristle," or "All Pure Bristle," or with word or words of similar import or meaning, on the handle or ferrule thereof, to the end that the purchasing and consuming public may be correctly informed as to the content of such brushes.

Promulgated by the Federal Trade Commission January 14, 1939.

* See page VIII for headnote applicable to Group II Rules.

TRADE PRACTICE RULES

FOR THE

INFANTS' AND CHILDREN'S KNITTED OUTERWEAR INDUSTRY

PROMULGATED JUNE 28, 1939

STATEMENT BY THE COMMISSION

Trade practice rules for the Infants' and Children's Knitted Outerwear Industry, as herein set forth, are promulgated by the Federal Trade Commission under its trade practice conference procedure.

The products of the industry consist of infants' and children's knitted outerwear of all kinds manufactured, or imported, and distributed in the United States. The members of the industry are persons, firms, and corporations engaged in one or more phases of the business of manufacturing, importing, jobbing, and distributing such knitted outerwear. Among such industry members are persons and concerns which manufacture or operate for the account of others, as well as those who are directly engaged as manufacturers, importers, jobbers, or distributors, including persons or concerns having such knitted outerwear manufactured or made for them by so-called contract mills or operators.

In the course of the proceedings an industry conference was held in New York City, under the Commission's auspices, and proposed trade practice rules were submitted by members of the industry. Subsequently, tentative action was taken by the Commission on the rules so submitted and a draft of proposed rules was made available, upon public notice, to all interested or affected parties, affording them opportunity to present their views, suggestions, or objections, if any, and to be heard in respect to such rules. Accordingly, a hearing was held in Washington and all matters submitted orally and in writing were received and given due consideration.

Upon consideration of the entire matter, final action was taken and the rules in the form appearing herein under Group I were approved by the Commission, and the rule shown under Group II was received by the Commission as an expression of the industry.

THE RULES

GROUP I*

(NOTE.—These rules do not supplant, or relieve any member of the in-

* See page VIII for headnote applicable to Group I Rules.

dustry or other party of the necessity of complying with, the applicable fiber identification rules and other pertinent Group I rules approved and promulgated by the Federal Trade Commission.)

RULE 1. Misrepresentation of Industry Products.

It is an unfair trade practice to make or publish, or cause to be made or published, directly or indirectly, any false, misleading, or deceptive statement or representation, by way of advertisement or otherwise, concerning the character, grade, quality, quantity, substance, nature, material, content, use, origin, size, serviceability, color, colorfastness, workmanship, washability, fiber content or identification, shrinkage properties, manufacture, or distribution of such products, or the yarn or any component of the product, or in any other material respect.

RULE 2. Misbranding.

The false or deceptive marking or branding of products of the industry with respect to the character, grade, quality, quantity, substance, nature, material, content, use, origin, size, serviceability, color, colorfastness, workmanship, washability, fiber content or identification, shrinkage properties, manufacture, or distribution of such products, or the yarn or any component of the product, or in any other material respect, is an unfair trade practice.

RULE 3. Fiber Identification of Product.

Identification and disclosure of fiber and other material content of the product of this industry shall be made in accordance with the applicable requirements of the Group I fiber identification rules approved and promulgated by the Commission, such as the Group I Rayon Rules promulgated October 26, 1937, relating to products containing rayon in whole or in part, and the Group I Silk Rules promulgated November 4, 1938, relating to products containing or purporting to contain silk in whole or in part, and such other provisions of laws and regulations on the subject as or when made applicable to the products of this industry.

RULE 4. Misrepresentation—Character of Business.

(a) It is an unfair trade practice for any person, partnership, or corporation, by trade or corporate name or otherwise, to hold himself or itself out as being a manufacturer, producer, or importer when such is not true in fact.

(b) It is an unfair trade practice for any person, partnership, or corporation in the conduct of business to represent himself or itself, directly or indirectly, as having or operating a knitted outerwear

business, in whole or in part, or a department or branch thereof, when such is not true in fact; or in any other manner to misrepresent the character, nature, or status of the business of such person, partnership, or corporation.

RULE 5. Imitation or Simulation of Trade-marks, Etc.

The imitation or simulation of the trade-marks, trade names, brands, or labels of competitors, or of the exclusively owned symbols of competitors which have not been directly or by operation of law dedicated to the public, with the tendency and capacity or effect of misleading or deceiving purchasers or the consuming public, is an unfair trade practice.

RULE 6.

(a) *Prohibited Discriminatory Prices, or Rebates, Refunds, Discounts, Credits, Etc.,¹ Which Effect Unlawful Price Discrimination.*—It is an unfair trade practice for any member of the industry engaged in commerce,² in the course of such commerce, to grant or allow, secretly or openly, directly or indirectly, any rebate, refund, discount, credit, or other form of price differential,¹ where such rebate, refund, discount, credit, or other form of price differential effects a discrimination in price between different purchasers of goods of like grade and quality, where either or any of the purchases involved therein are in commerce,² and where the effect thereof may be substantially to lessen competition or tend to create a monopoly in any line of commerce,² or to injure, destroy, or prevent competition with any person who either grants or knowingly receives the benefit of such discrimination or with customers of either of them: *Provided, however*—

(1) That the goods involved in any such transaction are sold for use, consumption, or resale within any place under the jurisdiction of the United States;

(2) That nothing herein contained shall prevent differentials which make only due allowance for differences in the cost of manufacture, sale, or delivery resulting from the differing methods or quantities in which such commodities are to such purchasers sold or delivered;

(3) That nothing herein contained shall prevent persons engaged in selling goods, wares, or merchandise in commerce² from selecting their own customers in bona fide transactions and not in restraint of trade;

(4) That nothing herein contained shall prevent price changes from time to time where made in response to changing conditions

¹ Paragraph (a) of Rule 6 shall not be construed as embracing practices prohibited by paragraphs (b), (c), and (d) of this rule.

² See footnote, p. 460.

affecting either (a) the market for the goods concerned, or (b) the marketability of the goods, such as, but not limited to, actual or imminent deterioration of perishable goods, obsolescence of seasonal goods, distress sales under court process, or sales in good faith in discontinuance of business in the goods concerned.

(b) *Prohibited Brokerage and Commissions.*—It is an unfair trade practice for any member of the industry engaged in commerce,² in the course of such commerce, to pay or grant, or to receive or accept, anything of value as a commission, brokerage, or other compensation, or any allowance or discount in lieu thereof, except for services rendered in connection with the sale or purchase of goods, wares, or merchandise, either to the other party to such transaction or to an agent, representative, or other intermediary therein where such intermediary is acting in fact for or in behalf, or is subject to the direct or indirect control, of any party to such transaction other than the person by whom such compensation is so granted or paid.

(c) *Prohibited Advertising or Promotional Allowances, Etc.*—It is an unfair trade practice for any member of the industry engaged in commerce² to pay or contract for the payment of advertising or promotional allowances or any other thing of value to or for the benefit of a customer of such member in the course of such commerce as compensation or in consideration for any services or facilities furnished by or through such customer in connection with the processing, handling, sale, or offering for sale of any products or commodities manufactured, sold, or offered for sale by such member, unless such payment or consideration is available on proportionally equal terms to all other customers competing in the distribution of such products or commodities.

(d) *Prohibited Discriminatory Services or Facilities.*—It is an unfair trade practice for any member of the industry engaged in commerce² to discriminate in favor of one purchaser against another purchaser or purchasers of a commodity bought for resale, with or without processing, by contracting to furnish or by furnishing, or by contributing to the furnishing of, any services or facilities connected with the processing, handling, sale, or offering for sale of such commodity so purchased upon terms not accorded to all purchasers on proportionally equal terms.

(e) *Inducing or Receiving an Illegal Discrimination in Price.*—It is an unfair trade practice for any member of the industry engaged in commerce,² in the course of such commerce, knowingly to induce or receive a discrimination in price which is prohibited by the foregoing provisions of this Rule 6.

² See footnote, p. 460.

RULE 7. *Discriminatory Returns.*

It is an unfair trade practice for any member of the industry engaged in commerce² to discriminate in favor of one customer-purchaser against another customer-purchaser of knitted outerwear, bought from such member of the industry for resale, by contracting to furnish or furnishing in connection therewith, upon terms not accorded to all customer-purchasers on proportionally equal terms, the service or facility whereby such favored purchaser is accorded the privilege of returning knitted outerwear so purchased and receiving therefor credit or refund of purchase price: *Provided, however,* Nothing in any of the rules herein shall prohibit or be used to prevent the return of merchandise by purchaser, for credit or refund of purchase price, when and because such merchandise has not been properly labeled by the seller as to fiber content, or has been otherwise falsely or deceptively labeled or represented, or when and because such merchandise is defective in material, workmanship, or in any other respect contrary to warranty or purchase contract.

RULE 8. *Consignment Sales.*

It is an unfair trade practice for any member of the industry to use the practice of shipping goods on consignment or pretended consignment for the purpose and with the effect of artificially clogging trade outlets and unduly restricting competitors' use of said trade outlets in getting their goods to consumers through regular channels of distribution, or with such purpose to entirely close said trade outlets to such competitors so as to substantially lessen competition or tend to create a monopoly or to unreasonably restrain trade: *Provided, however,* That nothing herein shall be construed or used as restricting or preventing consignment shipping or marketing of commodities in good faith and without artificial interference with competitors' use of the usual channels of distribution in such manner as thereby to suppress competition or restrain trade.

RULE 9. *Aiding or Abetting Use of Unfair Trade Practices.*

It is an unfair trade practice for any person, firm, or corporation to aid, abet, coerce, or induce another, directly or indirectly, to use or promote the use of any unfair trade practice specified in these rules.

GROUP II*

RULE A. *Return of Merchandise—Expression of Industry.*

The practice, by members of the industry, of selling merchandise and later permitting the purchaser to return it for credit or refund of purchase price, without just cause, creates waste and loss, increases

² See footnote, p. 460.

* See page VIII for headnote applicable to Group II Rules.

the cost of doing business, to the detriment of both the industry and the public, and is condemned by the industry, subject, however, to requirements and limitations set forth in the provisions of Rule 7 of Group I, herein, and subject also to the general limitation that members of the industry shall not engage in any combination or conspiracy in restraint of trade or use any other illegal methods in the regulation, control, or prevention of the return of merchandise.

Promulgated by the Federal Trade Commission June 28, 1939.

TRADE PRACTICE RULES

FOR THE

WINE INDUSTRY

PROMULGATED JUNE 29, 1939

STATEMENT BY THE COMMISSION

Trade practice rules for the Wine Industry, as herein set forth, are promulgated by the Federal Trade Commission under its trade practice conference procedure.

The products of this industry consist of the various types of still and sparkling wines produced chiefly from the fermented juice of grapes; brandy, produced by the distillation of wine; and certain compounds of wine, brandy and/or other ingredients, used as beverages. According to available information, the capitalization of the industry, exclusive of vineyards and their equipment, is approximately \$150,000,000; the annual dollar value of domestic sales, about \$35,000,000; and the average annual production of finished wine in the United States about 75,000,000 gallons.

In the course of the proceedings an industry conference was held in San Francisco, California, under the auspices of the Federal Trade Commission, and proposed trade practice rules were submitted by members of the industry. Subsequently, tentative action was taken by the Commission on the rules so submitted and a draft of proposed rules was made available, upon public notice, to all interested or affected parties, affording them opportunity to present such pertinent facts, suggestions, or objections as they desired, and to be heard in respect to the proposed rules. Accordingly, a hearing was held in Washington and all matters submitted were given due consideration.

Thereafter, and upon consideration of the entire matter, final action was taken and the rules in the form appearing herein under Group I and Group II were respectively approved and received by the Commission.

These rules do not in any respect supplant, or relieve any member of the industry or other party of the necessity of complying with, the requirements of the Federal Alcohol Administration Act, or other applicable provisions of law. They are established under statutes administered by the Federal Trade Commission for the purpose of more effectively stamping out unfair practices in the interest of the industry and the public, and to assist in general law enforcement to this end.

THE RULES

GROUP I*

RULE 1. *Misrepresentation as to Character of Business.*

It is an unfair trade practice for any person, firm, or corporation to represent, directly or indirectly, that he or it is a manufacturer, producer, or importer of wines or that he or it owns or controls a vineyard or vineyards wherein are grown the fruits from which his or its wines are produced, when such is not the fact, or in any other manner to misrepresent the character, extent, or type of his or its business.

RULE 2. *False Invoicing.*

Withholding from or inserting in invoices any statements or information by reason of which omission or insertion a false record is made, wholly or in part, of the transactions represented on the face of such invoices, with the effect of thereby misleading or deceiving purchasers, prospective purchasers, or the consuming public, is an unfair trade practice.

RULE 3. *Substitution of Products.*

The practice of shipping or delivering products which do not conform to specifications provided for in the contract or order or to representations made concerning such products, without the consent of the purchasers to such changes or substitutions and with the tendency and capacity or effect of misleading or deceiving purchasers, prospective purchasers, or the consuming public, is an unfair trade practice.

RULE 4. *Defamation of Competitors or Disparagement of Their Products.*

The defamation of competitors by falsely imputing to them dishonorable conduct, inability to perform contracts, questionable credit standing, or by other false representations, or the false disparagement of the grade, quality, or manufacture of the products of competitors or of their business methods, selling prices, values, credit terms, policies, or services, is an unfair trade practice.

RULE 5. *Imitation of Trade-marks, Etc.*

The imitation or simulation of the trade-marks, trade names, brands, or labels of competitors, with the tendency and capacity or effect of misleading or deceiving purchasers, prospective purchasers, or the consuming public, is an unfair trade practice.

RULE 6. *Procurement of Competitors' Confidential Information by Unfair Means and Wrongful Use Thereof.*

It is an unfair trade practice for any member of the industry to

* See page VIII for headnote applicable to Group I Rules.

obtain information concerning the business of a competitor, by bribery of an employee or agent of such competitor, by false or misleading statements or representations, by the impersonation of one in authority, or by any other unfair means, and to use the information so obtained in such a manner as to injure said competitor in his business or to suppress competition or unreasonably restrain trade.

RULE 7. *Threats of Suit.*

The circulation of threats of suit for infringement of patents or trade-marks among customers or prospective customers of competitors, not made in good faith but for the purpose or with the effect of harassing or intimidating such customers or prospective customers or of unduly hampering, injuring, or prejudicing competitors in their businesses, is an unfair trade practice.

RULE 8. *Inducing Breach of Contract.*

Inducing or attempting to induce the breach of existing lawful contracts between competitors and their customers or their suppliers by any false or deceptive means whatsoever, or interfering with or obstructing the performance of any such contractual duties or services by any such means, with the purpose and effect of unduly hampering, injuring, or prejudicing competitors in their businesses, is an unfair trade practice.

RULE 9. *Enticing Away Employees of Competitors.*

Wilfully enticing away the employees of competitors, with the purpose and effect of unduly hampering, injuring, or prejudicing competitors in their businesses, is an unfair trade practice.

RULE 10.

(a) *Prohibited Discriminatory Prices, or Rebates, Refunds, Discounts, Credits, Etc.,¹ Which Effect Unlawful Price Discrimination.*

It is an unfair trade practice for any member of the industry engaged in commerce,² in the course of such commerce, to grant or allow, secretly or openly, directly or indirectly, any rebate, refund, discount, credit, or other form of price differential,¹ where such rebate, refund, discount, credit, or other form of price differential effects a discrimination in price between different purchasers of goods of like grade and quality, where either or any of the purchases involved therein are in commerce,² and where the effect thereof may be substantially to lessen competition or tend to create a monopoly in any line of commerce,² or to injure, destroy, or prevent competition with any person who either grants or knowingly receives the benefit of such discrimination or with customers of either of them: *Provided, however—*

¹ Paragraph (a) of Rule 10 shall not be construed as embracing practices prohibited by paragraphs (b), (c), and (d) of this rule.

² See footnote, p. 460.

(1) That the goods involved in any such transaction are sold for use, consumption, or resale within any place under the jurisdiction of the United States;

(2) That nothing herein contained shall prevent differentials which make only due allowance for differences in the cost of manufacture, sale, or delivery resulting from the differing methods or quantities in which such commodities are to such purchasers sold or delivered;

(3) That nothing herein contained shall prevent persons engaged in selling goods, wares, or merchandise in commerce² from selecting their own customers in bona fide transactions and not in restraint of trade;

(4) That nothing herein contained shall prevent price changes from time to time where made in response to changing conditions affecting either (a) the market for the goods concerned, or (b) the marketability of the goods, such as, but not limited to, actual or imminent deterioration of perishable goods, obsolescence of seasonal goods, distress sales under court process, or sales in good faith in discontinuance of business in the goods concerned.

(b) *Prohibited Brokerage and Commissions.*—It is an unfair trade practice for any member of the industry engaged in commerce,² in the course of such commerce, to pay or grant, or to receive or accept, anything of value as a commission, brokerage, or other compensation, or any allowance or discount in lieu thereof, except for services rendered in connection with the sale or purchase of goods, wares, or merchandise, either to the other party to such transaction or to an agent, representative, or other intermediary therein where such intermediary is acting in fact for or in behalf, or is subject to the direct or indirect control, of any party to such transaction other than the person by whom such compensation is so granted or paid.

(c) *Prohibited Advertising or Promotional Allowances, Etc.*—It is an unfair trade practice for any member of the industry engaged in commerce² to pay or contract for the payment of advertising or promotional allowances or any other thing of value to or for the benefit of a customer of such member in the course of such commerce as compensation or in consideration for any services or facilities furnished by or through such customer in connection with the processing, handling, sale, or offering for sale of any products or commodities manufactured, sold, or offered for sale by such member, unless such payment or consideration is available on proportionally equal terms to all

² See footnote, p. 460.

other customers competing in the distribution of such products or commodities.

(d) *Prohibited Discriminatory Services or Facilities.*—It is an unfair trade practice for any member of the industry engaged in commerce² to discriminate in favor of one purchaser against another purchaser or purchasers of a commodity bought for resale, with or without processing, by contracting to furnish or by furnishing, or by contributing to the furnishing of, any services or facilities connected with the processing, handling, sale, or offering for sale of such commodity so purchased upon terms not accorded to all purchasers on proportionally equal terms.

(e) *Inducing or Receiving an Illegal Discrimination in Price.*—It is an unfair trade practice for any member of the industry engaged in commerce,² in the course of such commerce, knowingly to induce or receive a discrimination in price which is prohibited by the foregoing provisions of this Rule 10.

RULE 11. *Combination or Coercion to Fix Prices, Suppress Competition, or Restrain Trade.*

It is an unfair trade practice for any person, firm, partnership, corporation, or association—

(a) to use, directly or indirectly, any form of threat, intimidation, or coercion against any member of the industry to unlawfully fix, maintain, or enhance prices, suppress competition, or restrain trade; or

(b) to enter into or take part in, directly or indirectly, any agreement, understanding, combination, conspiracy, or concert of action with one or more persons, firms, partnerships, corporations, or associations to fix, maintain, or enhance prices, suppress competition, or restrain trade.

RULE 12. *Selling Below Cost.*

The practice of selling industry products below the seller's cost, when pursued with wrongful intent of thereby injuring a competitor and where the effect of such practice is to unreasonably restrain trade, tend to create a monopoly, or substantially lessen competition, is an unfair trade practice.

This rule is not to be construed as prohibiting all sales below cost, but only such selling below the seller's cost as is resorted to and pursued as a monopolistic practice with the wrongful intent referred to and coupled with the effect of unreasonably restraining trade, tending to create a monopoly, or substantially lessening competition. Sales below cost by a competitor not in a sufficiently strong competitive posi-

² See footnote, p. 460.

tion to produce, and not actually producing, the monopolistic or restraining effect mentioned, do not fall within the inhibitions of this rule.

The costs referred to in the rule are actual costs of the respective seller and not some other figure or average costs in the industry, determined by an industry cost survey or otherwise.

RULE 13. *Aiding or Abetting Use of Unfair Trade Practices.*

It is an unfair trade practice for any person, firm, or corporation to aid, abet, coerce, or induce another, directly or indirectly, to use or promote the use of any unfair trade practice specified in these rules.

GROUP II*

RULE A. *Repudiation of Contracts.*

Lawful contracts are business obligations which should be performed in letter and in spirit. The repudiation of contracts by sellers on a rising market or by buyers on a declining market is condemned by the industry.

RULE B. *Abuse of Buying and Selling Power.*

The use of buying power to force uneconomic or unjust terms of sale upon sellers, and the use of selling power to force uneconomic or unjust terms of sale upon buyers, are condemned by the industry.

RULE C. *Maintenance of Accurate Records.*

It is the judgment of the industry that each member should independently keep proper and accurate records for determining his costs.

Promulgated by the Federal Trade Commission June 29, 1939.

* See page VIII for headnote applicable to Group II Rules.

TRADE PRACTICE RULES

FOR THE

PUTTY MANUFACTURING INDUSTRY

PROMULGATED JUNE 30, 1939

STATEMENT BY THE COMMISSION

Trade practice rules for the Putty Manufacturing Industry, as herein set forth, are promulgated by the Federal Trade Commission under its trade practice conference procedure.

The rules relate to the sale and distribution of putty throughout the United States and have for their purpose the elimination and prevention of misrepresentation, deceptive concealment, and various other unfair methods of competition and unfair or deceptive acts or practices.

Putty is used largely in the glazing and reglazing of wood and steel window sash, and for other purposes generally connected with construction, maintenance, or repair work. According to the most recent statistics available, the total volume of production of putty in the United States for the year 1937 amounted to 90,544,189 pounds, with manufacturers' sales totaling approximately \$3,683,418 for the year.

In the course of the proceedings an industry conference was held in Washington, D. C., under the Commission's auspices, and proposed trade practice rules were submitted by members of the industry. Subsequently, tentative action was taken by the Commission on the rules so submitted and a draft of the proposed rules was made available, upon public notice, to all interested or affected parties, affording them opportunity to present such pertinent facts, suggestions, or objections as they desired, and to be heard in respect to the proposed rules. Accordingly, a public hearing was held in Washington and all matters submitted were given due consideration.

Thereafter, and upon consideration of the entire matter, final action was taken and the rules in the form appearing herein under Group I were approved by the Commission.

THE RULES

GROUP I*

RULE 1. *False Advertising.*

Making, or causing to be made or published, any false, misleading, or deceptive statement or representation, by way of advertisement or

* See page VIII for headnote applicable to Group I Rules.

otherwise, concerning the grade, quality, quantity, substance, character, size, material, content, origin, preparation, manufacture, or distribution of any industry product, or in any other material respect, is an unfair trade practice.

RULE 2. Deceptive Marking, Branding, or Devices.

The sale or offering for sale of any product of the industry by any false or deceptive means or device, or the false or deceptive marking or branding of products of the industry, with respect to the grade, quality, quantity, use, material, content, preparation, manufacture, or distribution of such products, or in any other material respect, is an unfair trade practice.

RULE 3. Misrepresentation of Vehicle.

The marking, branding, advertising, or representing of any industry product as "Pure Putty," "Pure Linseed Putty," "Linseed Oil Putty," or by words, signs, abbreviations, or other representations of similar import or meaning, as descriptive of putty the vehicle of which is not composed wholly of pure linseed oil, is an unfair trade practice. Nothing in this rule, however, shall be construed as prohibiting the use in such putty of necessary or desirable amounts of drier, provided the presence of such drier is fully and nondeceptively disclosed on the label and purchasers of the putty are informed of such content of drier.

RULE 4. Deceptive Concealment.

(a) In the case of wood sash putty in which mineral or other oils are used in the vehicle as an adulterant or as a substitute for linseed oil, in whole or in part, it is an unfair trade practice to conceal or fail or refuse to disclose the presence of such adulterant or substitute oils, with the capacity and tendency or effect of thereby misleading or deceiving the purchasing or consuming public.

(b) Nondisclosure, or concealment from purchasers, of any ingredient of a product offered for sale or sold as or for putty where such nondisclosure or concealment is practiced by the seller with the tendency and capacity or effect of thereby misleading or deceiving the purchasing or consuming public is an unfair trade practice.

RULE 5. Misrepresentation of Pigment.

The marking, branding, advertising, or representing of any industry product as "Chalk Putty," "Chalk Whiting Putty," or "True Chalk Whiting Putty," or by words, signs, abbreviations, or other representations of similar import or meaning, as descriptive of putty the pigment of which is not composed wholly of pure chalk whiting, is an unfair trade practice.

RULE 6. Misrepresentation of White Lead.

It is an unfair trade practice, directly or by implication, to advertise, describe, mark, brand, label, or otherwise represent any putty (a) as containing white lead when such is not the fact; or (b) as containing more white lead than is in fact present in the product; or (c) as being white lead putty when the same in fact contains no white lead or when the putty does not contain white lead in sufficient proportion to impart to the product substantial and effectual white lead characteristics or properties; or (d) to advertise, describe, mark, brand, label, or represent putty in any other manner which has the capacity and tendency or effect of misleading or deceiving the purchasing or consuming public as to the presence of lead or as to the kind, character, or percentage thereof contained in the product.

(NOTE.—In respect to putty marketed through dealer-channels of trade to the consuming public, represented or sold as containing lead or as being white lead putty, disclosure shall be made on the label or container of the kind or type of lead, whether carbonate or sulphate, and the total percentage of lead contained in the product, to the end that misrepresentation or deceptive concealment as to the lead content of the product may be avoided and prevented. And the failure or refusal to make such disclosure, with the capacity and tendency or effect of thereby misleading or deceiving the purchasing or consuming public, is an unfair trade practice.)

RULE 7. Imitation of Trade-marks, Trade Names, Etc.

The practice of imitating or causing to be imitated, or directly or indirectly promoting the imitation of, the trade-marks, trade names, or other exclusively owned symbols or marks of identification of competitors, having the capacity, tendency, or effect of misleading or deceiving the purchasing or consuming public, is an unfair trade practice.

RULE 8. Defamation of Competitors or Disparagement of Their Products.

The defamation of competitors by falsely imputing to them dishonorable conduct, inability to perform contracts, questionable credit standing, or by other false representations, or the false disparagement of the grade, quality, or manufacture of the products of competitors, or of their business methods, selling prices, values, credit terms, policies, or services, or conditions of employment, is an unfair trade practice.

RULE 9. Commercial Bribery.

Directly or indirectly to give, or permit to be given, or offer to give, money or anything of value to agents, employees, or representatives of customers or prospective customers, or to agents, employees, or representatives of competitors' customers or prospective customers, without the knowledge of their employers or principals, as an inducement to influence their employers or principals to purchase or contract to

purchase any industry products from the maker of such gift or offer or to influence such employers or principals to refrain from dealing or contracting to deal with competitors, is an unfair trade practice.

RULE 10. False Invoicing.

Withholding from or inserting in invoices, bills of lading, delivery receipts, or other documents of title any statements or information by reason of which omission or insertion a false record is made, wholly or in part, of the transactions represented on the face of such invoices, bills of lading, delivery receipts, or other documents of title, with the effect of thereby misleading or deceiving the purchasing or consuming public, is an unfair trade practice.

RULE 11. Use of Short-weight Containers.

The selling or offering for sale of putty in so-called short-weight containers or packed in odd-size or odd-shaped containers or packages simulating in size or shape standard size or shaped containers or packages which are known to the public as standard containers of definite capacity, with the tendency and capacity or effect of misleading or deceiving the purchasing or consuming public as to the contents of such containers or packages or the amount of putty contained therein, is an unfair trade practice.

RULE 12. False Guarantee.

The making of any guarantee as to the durability or service of any industry product which is untrue or which is impracticable or impossible to fulfill because of contingencies such as, but not limited to, workmanship or maintenance over which the manufacturer or guarantor has no control, or which otherwise has a tendency, capacity, or effect of deceiving or misleading the purchasing or consuming public, is an unfair trade practice.

RULE 13.

(a) Prohibited Discriminatory Prices, or Rebates, Refunds, Discounts, Credits, Etc.,¹ Which Effect Unlawful Price Discrimination.

It is an unfair trade practice for any member of the industry engaged in commerce,² in the course of such commerce, to grant or allow, secretly or openly, directly or indirectly, any rebate, refund, discount, credit, or other form of price differential,¹ where such rebate, refund, discount, credit, or other form of price differential effects a discrimination in price between different purchasers of goods of like grade and quality, where either or any of the purchases involved therein are in commerce,² and where the effect thereof may be substantially to lessen competition or tend to create a monopoly in any line of commerce,² or to injure, destroy, or prevent competition with any person

¹ Paragraph (a) of Rule 13 shall not be construed as embracing practices prohibited by paragraphs (b), (c), and (d) of this rule.

² See footnote, p. 460.

who either grants or knowingly receives the benefit of such discrimination or with customers of either of them: *Provided, however—*

(1) That the goods involved in any such transaction are sold for use, consumption, or resale within any place under the jurisdiction of the United States;

(2) That nothing herein contained shall prevent differentials which make only due allowance for differences in the cost of manufacture, sale, or delivery resulting from the differing methods or quantities in which such commodities are to such purchasers sold or delivered;

(3) That nothing herein contained shall prevent persons engaged in selling goods, wares, or merchandise in commerce² from selecting their own customers in bona fide transactions and not in restraint of trade;

(4) That nothing herein contained shall prevent price changes from time to time where made in response to changing conditions affecting either (a) the market for the goods concerned, or (b) the marketability of the goods, such as, but not limited to, actual or imminent deterioration of perishable goods, obsolescence of seasonal goods, distress sales under court process, or sales in good faith in discontinuance of business in the goods concerned.

(b) Prohibited Brokerage and Commissions.—It is an unfair trade practice for any member of the industry engaged in commerce,² in the course of such commerce, to pay or grant, or to receive or accept, anything of value as a commission, brokerage, or other compensation, or any allowance or discount in lieu thereof, except for services rendered in connection with the sale or purchase of goods, wares, or merchandise, either to the other party to such transaction or to an agent, representative, or other intermediary therein where such intermediary is acting in fact for or in behalf, or is subject to the direct or indirect control, of any party to such transaction other than the person by whom such compensation is so granted or paid.

(c) Prohibited Advertising or Promotional Allowances, Etc.—It is an unfair trade practice for any member of the industry engaged in commerce² to pay or contract for the payment of advertising or promotional allowances or any other thing of value to or for the benefit of a customer of such member in the course of such commerce as compensation or in consideration for any services or facilities furnished by or through such customer in connection with the processing, handling, sale, or offering for sale of any products or commodities manufactured, sold, or offered for sale by such member, unless such pay-

² See footnote, p. 460.

ment or consideration is available on proportionally equal terms to all other customers competing in the distribution of such products or commodities.

(d) *Prohibited Discriminatory Services or Facilities.*—It is an unfair trade practice for any member of the industry engaged in commerce² to discriminate in favor of one purchaser against another purchaser or purchasers of a commodity bought for resale, with or without processing, by contracting to furnish or by furnishing, or by contributing to the furnishing of, any services or facilities connected with the processing, handling, sale, or offering for sale of such commodity so purchased upon terms not accorded to all purchasers on proportionally equal terms.

(e) *Inducing or Receiving an Illegal Discrimination in Price.*—It is an unfair trade practice for any member of the industry engaged in commerce,² in the course of such commerce, knowingly to induce or receive a discrimination in price which is prohibited by the foregoing provisions of this Rule 13.

Promulgated by the Federal Trade Commission June 30, 1939.

² See footnote, p. 460.

TRADE PRACTICE RULES

FOR THE

MIRROR MANUFACTURING INDUSTRY

PROMULGATED JULY 19, 1939

STATEMENT BY THE COMMISSION

Trade practice rules for the Mirror Manufacturing Industry, as herein set forth, are promulgated by the Federal Trade Commission under the trade practice conference procedure. The rules provide for the proper identification and disclosure of the kind of glass in mirrors and for the elimination and prevention of misrepresentation, deceptive concealment, and various other unfair trade practices, in the interest of maintaining fair competitive conditions and the protection of the purchasing public.

Available statistics show that for the year 1937, the production of mirrors in this country approximated \$20,000,000, manufacturers' prices. Mirrors are widely used for many decorative purposes and in construction work; also, as part of furniture, cabinets, store fixtures, and other articles of commerce. They are also marketed for use as mirror novelties and specialties, and for other purposes. The rules apply to mirrors when sold as part of, or in connection with, any commodity or article of commerce as well as when sold separately; and the legal requirements expressed in the rules are applicable in the sale or distribution of such mirrors in commerce by mirror manufacturers, furniture manufacturers, or other manufacturers, or by jobbers, distributors, dealers, or other sellers. The provisions of the rules as promulgated afford a helpful guide to industry, trade, and the purchasing public in respect to the unfair trade practices specified.

The proceeding for the establishment of trade practice rules was instituted upon application of the industry. In the course thereof an industry conference was held, under the auspices of the Commission, at which proposed rules were submitted for Commission action by members of the industry. In due course tentative action was taken by the Commission on the rules so submitted and a draft of proposed rules was made available upon public notice issued by the Commission to all interested or affected parties, whereby they were afforded opportunity to present their views concerning such rules, including such pertinent information, suggestions, or objections as they desired to submit, and to be heard in the premises. Accordingly, public hearing was held in Washington pursuant to such notice and all matters submitted in the proceeding were duly received and considered.

Thereafter, and upon consideration of the entire proceeding, final action was taken by the Commission whereby it approved and received, respectively, the rules appearing herein under Group I and Group II.

As herein promulgated, the rules supersede and replace the trade practice rules promulgated by the Commission for this industry on December 31, 1936.

THE RULES

GROUP I*

RULE 1. Definitions.

For the purpose of these rules the following definitions shall apply:

(a) Plate glass mirrors are mirrors the glass of which is polished plate glass. Plate glass is transparent, flat glass with plane and parallel surfaces, ground and polished to the extent that the glass shows no distortion of vision when objects are viewed through it at any angle. Plate glass is produced in several different grades and may be obtained also in different thicknesses, namely, $\frac{1}{8}$ ", $\frac{1}{4}$ ", $\frac{3}{8}$ ", and other thicknesses.

(b) Window glass (or so-called shock) mirrors are mirrors the glass of which is window glass. Window glass is transparent, flat glass, having glossy, fire finished, apparently plane and smooth surfaces not ground and polished as in the case of plate glass but having a characteristic waviness of surface which is visible when viewed at an acute angle or in reflected light. Window glass for use in mirrors is customarily made in thicknesses of $\frac{3}{8}$ " and $\frac{1}{2}$ ". It is also made in thicknesses of $\frac{1}{8}$ ", $\frac{3}{16}$ ", $\frac{1}{4}$ ", and other thicknesses.

RULE 2. Deception in General.

It is an unfair trade practice to use, or cause or promote the use of, any advertisements, descriptions, brands, marks, labels, representations, or selling methods (a) which have the capacity and tendency or effect of misleading or deceiving the purchasing or consuming public with respect to the brand, manufacture, grade, quality, durability, thickness, origin, size, substance, content, condition, backing, silvering, finish, material, or character of any mirror or other product of the industry; or (b) which are false, misleading, or deceptive in any other material respect.

RULE 3. Misrepresentations as to Kind of Glass, Quality, Thickness, or Backing.

It is an unfair trade practice to sell, offer for sale, advertise, describe, brand, label, or otherwise represent, directly or indirectly, any mirror:

* See page VIII for headnote applicable to Group I Rules.

(a) As "plate" or "plate glass," or as being made of plate glass, when the glass of such mirror is not in fact plate glass; or

(b) As being made of glass of a certain grade, quality, or thickness, or as being free from or as having certain characteristics, when such is not true in fact; or

(c) As being or not being made of window glass when such is not true in fact; or

(d) As being copper backed or backed with copper or having copper backing when such backing is not genuine metallic copper applied by the electrolytic process. Nothing in this rule shall be construed, however, as prohibiting the use of representations to the effect that any backing on mirrors which has not been applied by the electrolytic process contains copper when such is the fact: *Provided*, There is clearly and nondeceptively disclosed, in immediate conjunction with such representations, information clearly showing the fact that the backing on the mirrors is not such genuine metallic copper backing electrolytically applied: *And provided further*, Said representations are clearly and definitely qualified, phrased, or stated in such manner as not to cause the purchasing or consuming public to be deceptively confused, misled, or deceived as to the character, nature, or content of such backing, or otherwise; or

(e) As being made of or containing crystal glass or as being crystal when such glass is not in fact crystal glass.

RULE 4. Misuse of Words "Plate Glass Thickness," Etc.

The use of the words "plate glass thickness" or words or representations of similar import as descriptive of mirrors which are made of glass other than plate glass, with the capacity and tendency or effect of misleading or deceiving the purchasing or consuming public, is an unfair trade practice.

RULE 5. Use of Term "Sheet Glass" without Disclosing Kind of Glass.

The use of the term "sheet" or "sheet glass," or words of similar import, as descriptive of mirrors made of window glass or plate glass without disclosing the fact that the glass in such mirrors is window glass or plate glass as the case may be, having the capacity and tendency or effect of misleading or deceiving the purchasing or consuming public, is an unfair trade practice.

RULE 6. Disclosure as to Kind of Glass in Mirrors.

(a) Full and nondeceptive disclosure as to whether the glass in mirrors is plate glass, window glass, or other glass should be made in accordance with the hereinafter stated provisions of this rule, to the end that the purchasing and consuming public may be informed as to the kind of glass in such mirrors and that deceptive concealment, misunderstanding, misrepresentation, and unfair practices may be

avoided and prevented in the marketing of such mirrors. And it is an unfair trade practice to conceal the fact as to the kind of glass in the mirrors or to offer for sale, sell, or distribute mirrors without the disclosure of the kind of glass therein, such concealment or nondisclosure having the capacity and tendency or effect of misleading or deceiving the purchasing or consuming public.

(b) Said disclosure, pursuant to this rule, of the kind of glass in mirrors, shall be made by a label attached to and displayed upon the face of each mirror of a size greater than 48 square inches, on which label the facts as to the kind of glass of which the mirror is composed shall be set forth clearly and nondeceptively, as for example, "PLATE GLASS" for mirrors composed of plate glass; "WINDOW GLASS" for mirrors composed of window glass.

(c) In making the above-mentioned disclosure under this rule, labels attached by manufacturers, or those first placing the mirrors in the channels of trade, shall be attached to the face of each glass in the mirror in such manner as to carry through the ordinary channels of trade to the ultimate purchaser or consumer, thus avoiding the necessity of relabeling or further labeling as to the kind of glass contained in the mirrors so long as such original label is clear and remains upon the mirror.

(d) The removal, obliteration, or defacement of any label required by this rule to appear upon the face of the mirror, or the sale, resale, or distribution of any mirror without a label as hereinabove provided for, with the capacity and tendency or effect of deceptively concealing the kind of glass contained in such mirror, or of otherwise causing such mirror to be offered for sale, sold, or purchased under false, misleading, or deceptive representations or conditions, is an unfair trade practice.

(e) It is deemed proper practice, in respect to mirrors covered by this rule or products containing such mirrors, for manufacturers, distributors, dealers, or other marketers to truthfully identify in their invoices or sales slips to purchasers, and in their catalogs and trade promotional literature, whether the respective mirrors so covered therein are "Plate Glass" or "Window Glass" mirrors. Failure or refusal to make such disclosure or identification when pursued with the capacity and tendency or effect of causing or promoting the sale, resale, or purchase of such mirrors or mirror products under conditions of deceptive concealment or other misleading conditions or representations, is an unfair trade practice.

RULE 7. *Deceptive Guarantees.*

It is an unfair trade practice to make or publish, or cause to be made or published, directly or indirectly, through advertising, trade or corporate name, or otherwise, any false, misleading, or deceptive

statement, guarantee, warranty, or other representation concerning "silver spoilage," or concerning the backing or silvering, or the life or durability of mirrors.

RULE 8. *Misrepresenting "Seconds," Etc.*

It is an unfair trade practice (a) to offer for sale, sell, or distribute lower quality or so-called "seconds" or defective mirrors as and for mirrors of higher grade or quality or as not being such "seconds"; or (b) to deceptively conceal the fact that the product is defective, thereby causing purchasers to be misled or deceived.

RULE 9. *Misuse of Terms "Close-outs," "Discontinued Lines," Etc.*

It is an unfair trade practice to advertise, describe, or otherwise represent regular lines of merchandise as "Close-outs," "Discontinued lines," or by words or representations of similar import, when such are not true in fact; or to so advertise, describe, or otherwise represent merchandise where the capacity and tendency or effect thereof is to lead the purchasing or consuming public to believe such merchandise is being offered for sale and sold at greatly reduced prices or at so-called "bargain" prices, when such is not the fact.

RULE 10. *Use of Lottery or Scheme of Chance.*

The offering or giving of prizes, premiums, or gifts in connection with the sale of industry products, or as an inducement thereto, by any scheme which involves lottery or scheme of chance, is an unfair trade practice.

RULE 11. *Substituting Inferior Products for Those Ordered.*

The practice of using or substituting any product of the industry inferior in grade or quality to that specified by the purchaser, without the consent of said purchaser to such use or substitution or with the tendency and capacity or effect of misleading or deceiving the purchasing or consuming public, is an unfair trade practice.

RULE 12. *Imitation or Simulation of Trade-marks, Etc.*

The imitation or simulation of the trade-marks, trade names, labels, or brands of competitors, with the capacity and tendency or effect of misleading or deceiving the purchasing or consuming public, is an unfair trade practice.

RULE 13. *False Invoicing.*

Withholding from or inserting in invoices any statement or information by reason of which omission or insertion a false record is made, wholly or in part, of the transactions represented on the face of such invoices, with the effect of thereby misleading or deceiving the purchasing or consuming public, is an unfair trade practice.

RULE 14. *Misleading Price Quotations, Etc.*

The making, publishing, or circulating by any member of the industry of false or misleading price quotations, price lists, terms, or conditions of sale, with the tendency and capacity or effect of misleading or deceiving the purchasing or consuming public, is an unfair trade practice.

RULE 15. *Commercial Bribery.*

It is an unfair trade practice for a member of the industry directly or indirectly to give or offer to give, or permit or cause to be given, money or anything of value to agents, employees, or representatives of customers or prospective customers, or to agents, employees, or representatives of competitors' customers or prospective customers, without the knowledge of their employers or principals, as an inducement to influence their employers or principals to purchase or contract to purchase products manufactured or sold by such industry member or the maker of such gift or offer or to influence such employers or principals to refrain from dealing in the products of competitors or from dealing or contracting to deal with competitors.

RULE 16. *Procurement of Competitors' Confidential Information by Unfair Means and Wrongful Use Thereof.*

It is an unfair trade practice for any member of the industry to obtain information concerning the business of a competitor, by bribery of an employee or agent of such competitor, by false or misleading statements or representations, by the impersonation of one in authority, or by any other unfair means, and to use the information so obtained in such a manner as to injure said competitor in his business or to suppress competition or unreasonably restrain trade.

RULE 17. *Defamation of Competitors or Disparagement of Their Products.*

The defamation of competitors by falsely imputing to them dishonorable conduct, inability to perform contracts, questionable credit standing, or by other false representations, or the false disparagement of the grade, quality, or manufacture of the products of competitors, or of their business methods, selling prices, values, credit terms, policies, services, or conditions of employment, is an unfair trade practice.

RULE 18. *Unfair Threats of Infringement Suits.*

The circulation of threats of suit for infringement of patents or trade-marks among customers or prospective customers of competitors, not made in good faith but for the purpose or with the effect of harassing or intimidating such customers or prospective customers or of unduly hampering, injuring, or prejudicing competitors in their businesses, is an unfair trade practice.

RULE 19. *Inducing Breach of Contract.*

Inducing or attempting to induce the breach of existing lawful contracts between competitors and their customers or their suppliers by any false or deceptive means whatsoever, or interfering with or obstructing the performance of any such contractual duties or services by any such means, with the purpose and effect of unduly hampering, injuring, or prejudicing competitors in their businesses, is an unfair trade practice.

RULE 20.

(a) *Prohibited Discriminatory Prices, or Rebates, Refunds, Discounts, Credits, Etc.,¹ Which Effect Unlawful Price Discrimination.*—It is an unfair trade practice for any member of the industry engaged in commerce,² in the course of such commerce, to grant or allow, secretly or openly, directly or indirectly, any rebate, refund, discount, credit, or other form of price differential,¹ where such rebate, refund, discount, credit, or other form of price differential effects a discrimination in price between different purchasers of goods of like grade and quality, where either or any of the purchases involved therein are in commerce,² and where the effect thereof may be substantially to lessen competition or tend to create a monopoly in any line of commerce,² or to injure, destroy, or prevent competition with any person who either grants or knowingly receives the benefit of such discrimination or with customers of either of them: *Provided, however*—

(1) That the goods involved in any such transaction are sold for use, consumption, or resale within any place under the jurisdiction of the United States;

(2) That nothing herein contained shall prevent differentials which make only due allowance for differences in the cost of manufacture, sale, or delivery resulting from the differing methods or quantities in which such commodities are to such purchasers sold or delivered;

(3) That nothing herein contained shall prevent persons engaged in selling goods, wares, or merchandise in commerce² from selecting their own customers in bona fide transactions and not in restraint of trade;

(4) That nothing herein contained shall prevent price changes from time to time where made in response to changing conditions affecting either (a) the market for the goods concerned, or (b) the marketability of the goods, such as, but not limited to, actual or imminent deterioration of perishable goods, obsolescence of

¹ Paragraph (a) of Rule 20 shall not be construed as embracing practices prohibited by paragraphs (b), (c), and (d) of this rule.

² See footnote, p. 460.

seasonal goods, distress sales under court process, or sales in good faith in discontinuance of business in the goods concerned.

(b) *Prohibited Brokerage and Commissions.*—It is an unfair trade practice for any member of the industry engaged in commerce,² in the course of such commerce, to pay or grant, or to receive or accept, anything of value as a commission, brokerage, or other compensation, or any allowance or discount in lieu thereof, except for services rendered in connection with the sale or purchase of goods, wares, or merchandise, either to the other party to such transaction or to an agent, representative, or other intermediary therein where such intermediary is acting in fact for or in behalf, or is subject to the direct or indirect control, of any party to such transaction other than the person by whom such compensation is so granted or paid.

(c) *Prohibited Advertising or Promotional Allowances, Etc.*—It is an unfair trade practice for any member of the industry engaged in commerce² to pay or contract for the payment of advertising or promotional allowances or any other thing of value to or for the benefit of a customer of such member in the course of such commerce as compensation or in consideration for any services or facilities furnished by or through such customer in connection with the processing, handling, sale, or offering for sale of any products or commodities manufactured, sold, or offered for sale by such member, unless such payment or consideration is available on proportionally equal terms to all other customers competing in the distribution of such products or commodities.

(d) *Prohibited Discriminatory Services or Facilities.*—It is an unfair trade practice for any member of the industry engaged in commerce² to discriminate in favor of one purchaser against another purchaser or purchasers of a commodity bought for resale, with or without processing, by contracting to furnish or by furnishing, or by contributing to the furnishing of, any services or facilities connected with the processing, handling, sale, or offering for sale of such commodity so purchased upon terms not accorded to all purchasers on proportionally equal terms.

(e) *Inducing or Receiving an Illegal Discrimination in Price.*—It is an unfair trade practice for any member of the industry engaged in commerce,² in the course of such commerce, knowingly to induce or receive a discrimination in price which is prohibited by the foregoing provisions of this Rule 20.

RULE 21. Aiding or Abetting Use of Unfair Trade Practices.

It is an unfair trade practice for any person, firm, or corporation

² See footnote, p. 460.

to aid, abet, coerce, or induce another, directly or indirectly, to use or promote the use of any unfair trade practice specified in these rules.

GROUP II*

RULE A.

The industry recommends that each member thereof comply with Commercial Standard CS27-36 for Mirrors as promulgated by the National Bureau of Standards, U. S. Department of Commerce.

RULE B.

To facilitate protection of the purchasing public it is the judgment and recommendation of the industry that the labels to be used pursuant to Rule 6 of Group I should be of uniform wording, as follows:

For plate glass mirrors—

“This mirror is made
of
PLATE GLASS.”

For window glass mirrors—

“This mirror is made
of
WINDOW GLASS.”

Promulgated by the Federal Trade Commission July 19, 1939.

* See page VIII for headnote applicable to Group II Rules.

TRADE PRACTICE RULES

FOR THE

RADIO RECEIVING SET MANUFACTURING INDUSTRY

PROMULGATED JULY 22, 1939

STATEMENT BY THE COMMISSION

Trade practice rules for the Radio Receiving Set Manufacturing Industry, as herein set forth, are promulgated by the Federal Trade Commission under the trade practice conference procedure.

The rules provide for the elimination and prevention of false advertising, deceptive selling methods, and certain other unfair trade practices, and are issued in the interest of protecting the purchasing public and maintaining fair competitive conditions in the industry. Such rules are applicable to radio receiving sets, radio parts, accessories, and related products of the industry, and to their sale and distribution in commerce by manufacturers, jobbers, distributors, dealers, or other marketers.

Available statistics indicate that for the year 1937, the industry's total sales of radio receiving sets, parts, accessories, etc., amounted to slightly more than \$460,000,000, retail value. For the year 1938, radio receiving sets sold by the industry, exclusive of parts, accessories, etc., totaled approximately 7,150,000, with an estimated retail sales value of about \$225,000,000. At the present time there are said to be in use in the United States about 41,000,000 radio sets. The industry, as a whole, has a large capital investment and employs many thousands of men and women in its manufacturing operations and in selling, distributing, and servicing its products.

The proceeding for the establishment of rules was instituted upon application of the industry. In the course of the proceeding drafts of rules proposed for the industry were made available upon public notice, issued by the Commission to all interested or affected parties, whereby they were afforded opportunity to present to the Commission their views, including such suggestions or objections as they desired to submit, and to be heard in the premises. Accordingly, public hearings were held at Washington, D. C., and all matters presented at the hearings, or otherwise submitted in pursuance of such notice, were duly received and considered.

Thereafter, and upon consideration of the entire proceeding, the rules appearing herein under Group I were given final approval by the Commission.

THE RULES

GROUP I*

RULE 1. *Misbranding, Misrepresentation, and Deceptive Selling Methods.*

It is an unfair trade practice for any member of the industry, in the course of or in relation to the marketing or distribution of radio receiving sets, parts or accessories therefor, or other products of the industry, (1) to use, or to cause, promote, or further the use of, any marks, brands, labels, depictions, advertisements, trade promotional descriptions, or representations of any kind which, directly or by implication, are false, misleading, or deceptive to the purchasing or consuming public; or (2) to offer for sale, sell, or distribute, or to cause or promote the sale or distribution of, radio receiving sets, parts or accessories therefor, or other products of the industry, under any other conditions or selling practices which have the capacity and tendency or effect of misleading or deceiving the purchasing or consuming public.

RULE 2. *"All-Wave," "Standard Broadcast," Etc.*

IN THE APPLICATION OF THESE RULES AND FOR THE PURPOSE OF AVOIDING CONFUSION, MISUNDERSTANDING, AND DECEPTION:

(a) Except as hereinafter provided, the terms "All-Wave," "World-Wave," "World-Wide Wave," or words, phrases, or representations of similar import, shall not be used as descriptive of a radio receiving set advertised, offered for sale, sold, or distributed in the American market when such set is not constructed to receive and capable of receiving, with reasonable or adequate consistency, the entire spectrum of radio frequencies in recognized use in the art, namely, all long-wave broadcasts and transmissions; all medium-wave and short-wave broadcasts and transmissions, and all other waves transmitted or broadcast, including both foreign and domestic; excepting, however, that such set so described or represented need not include within its capacity of reception such point-to-point transmissions as are confidential and illegal for general reception and divulgence by members of the public, nor such unchanging signals as emanate from radio beacons or radio lighthouses, when such set is not otherwise falsely or deceptively described or represented, directly or indirectly, as being constructed to receive, or as being capable of receiving, such point-to-point or beacon or lighthouse transmissions.

(b) Nothing herein contained shall prohibit the use of the term

* See page VIII for headnote applicable to Group I Rules.

"Limited All-Wave," "Limited World-Wave," "Limited World-Wide Wave," or term or words of similar import, as descriptive of a radio receiving set advertised, offered for sale, sold, or distributed in the American market when such set is constructed for and capable of consistently receiving at least a continuous spectrum of frequencies from 540 kilocycles to 18,000 kilocycles, provided such term or words are immediately accompanied by words, phrases, or terms, set forth conspicuously and clearly, unequivocally and truthfully stating the exact wave bands or frequencies which such set is capable of consistently receiving; for example:

"LIMITED ALL-WAVE
From 540 to 18,000 Kilocycles"

"LIMITED ALL-WAVE
From 530 to 21,000 Kilocycles"

"LIMITED WORLD-WAVE
From 540 to 18,000 Kilocycles"

"LIMITED WORLD-WIDE WAVE
From 540 to 18,000 Kilocycles"

"LIMITED ALL-WAVE
From 140 to 410 Kilocycles, and
From 540 to 18,000 Kilocycles"

"LIMITED WORLD-WAVE
From 540 to 18,000 Kilocycles, and
From 19,000 to 23,500 Kilocycles"

"LIMITED WORLD-WIDE WAVE
From 150 to 400 Kilocycles, and
From 540 to 35,000 Kilocycles"

(c) Nothing herein contained shall prohibit the use, as descriptive of a radio receiving set, of the term "all waves" as an integral part of a clause, sentence, or statement which truthfully and unequivocally sets forth the bands or radio frequencies such set does not cover, and wherein the words "all waves" are not given greater prominence or conspicuousness than the other parts of such clause, sentence, or statement: *Provided*, Such set is constructed for and capable of receiving with reasonable or adequate consistency all the waves or bands of frequencies from 540 to 18,000 kilocycles and such other bands or frequencies as are represented to be within its receptive capacity. The following are illustrative of such permissible phrases here provided for:

"All waves except for frequencies above 21,000 kilocycles and below 540 kilocycles."

"All waves except Asiatic stations."

"All waves except foreign and domestic frequencies above 18,000 kilocycles and below 540 kilocycles."

(d) The term "Standard Broadcast" shall not be used as descriptive of a radio receiving set which is not built for or capable of receiving with reasonable or adequate consistency a continuous spectrum of frequencies from 540 to at least 1,600 kilocycles.

(e) Also, the term "Standard Broadcast" as descriptive of a radio receiving set shall not be used in such manner as to lead the public to believe (1) that such set is constructed for and capable of receiving with reasonable or adequate consistency a greater number of radio frequency signals than is in fact true of such set; or (2) that the set is capable of so receiving more than the continuous spectrum of frequencies from 540 to 1,600 kilocycles.

(f) In the advertisement or sale of radio receiving sets, disclosure of the exact bands of frequencies which such sets are constructed to receive and capable of receiving with reasonable or adequate consistency is deemed desirable in the interest of avoiding confusion, misunderstanding, or deception of purchasers. Failure or refusal adequately to make such disclosure of frequencies, in connection with the use of the term "Standard Broadcast" or otherwise, when the capacity and tendency or effect thereof is to mislead or deceive the purchasing or consuming public, is an unfair trade practice.

(g) Nothing in these rules shall prevent the use, in lieu of "kilocycles," of other recognized units of measurement, such as "meters" or "megacycles," when employed in a truthful and nondeceptive manner.

RULE 3. *Specific Types of Advertisements or Representations Among Those Prohibited.*

It is an unfair trade practice for any member of the industry to use, or cause to be used, any of the following-described types of advertisements or representations:

(a) Advertisements or representations stating, purporting, or implying that any radio receiving set so advertised or represented will receive distant stations or any or all foreign broadcasts or transmissions easily or satisfactorily or as easily or satisfactorily as local or domestic reception when such is not the fact.

(b) Advertisements or representations stating, purporting, or implying that any radio receiving set so advertised, or represented, or the reception thereof, is not subject to interference or to being interfered with or interrupted by fading, noise, electrical interference, atmospheric conditions, static, or any other phenomena or conditions, when such is not the fact.

(c) Advertisements or representations, with respect to the receiving capacity or performance of a radio receiving set, which make

deceptively exaggerated or misleading claims, or claims which are not justified and supported by the fact or performance of such radio set in the locality in which it is so advertised, represented, and sold.

(d) Advertisements or representations which directly or by implication lead purchasers to believe that the radio set so advertised or represented is capable of greater or more consistent or satisfactory performance or reception than is in fact true.

(e) Advertisements or representations stating, purporting, or implying that any radio receiving set so advertised or represented will give world-wide continuous reception or other continuous reception when such is not the fact; or that the radio receiving set will give such reception or other reception with loud-speaker volume when such is not the fact; or that the radio receiving set will give world-wide reception or other reception regularly or dependably when such is not the fact.

(f) Advertisements or representations which present claims or representations concerning any radio receiving set in such a way as deceptively to cover or conceal defects or deficiencies inherent in such set, or defects or deficiencies inherent in the contemporaneous state of the art to which the receiving set is subject but which are not generally known to the purchasing public.

(g) Advertisements or representations of any radio receiving set stating, purporting, or implying that each station or any station, whether nearby or foreign or domestic, can be brought in, or brought in with sharp, clear, or distinct reception or with ease, simplicity, or regularity, by any radio receiving set so advertised or represented, when such is not the fact.

(h) Advertisements or representations stating, purporting, or implying that any radio receiving set so advertised or represented will bring in or receive broadcasts from Europe, Africa, South America, Australia, or Asia, or from any other designated locality; or that it will bring in such broadcasts, or any of them, consistently or satisfactorily, when such is not the fact.

(i) Advertisements or representations stating, purporting, or implying that any radio receiving set so advertised or represented sifts out noise or is free from noise, or brings in far distant stations sharp or clear, when such is not the fact.

(j) Advertisements or representations stating, purporting, or implying that any radio receiving set so advertised or represented will bring in or receive satisfactorily or consistently foreign stations, police calls, aviation calls, radio transmissions from or to ships at sea, amateur stations, or other types of radio transmissions, when such is not the fact, or when only a small part of any such class of radio frequencies

transmitted or broadcast is so receivable and such fact, or the fact that others of the same class are not so receivable, is deceptively concealed.

(k) Advertisements or representations stating, purporting, or implying that any radio receiving set so advertised or represented contains a certain number of tubes or is of a certain tube capacity when one or more of such tubes in the set are dummy or fake tubes, or are tubes which perform no useful function, or are tubes which do not perform or were not placed in the set to perform the recognized and customary function of a radio receiving set tube in the detection, amplification, and reception of radio signals.

(NOTE.—In order to avoid and prevent deceptive or misleading tendencies or results, so-called "ballast tubes," dial or other lamps used for illumination, so-called plug-in resistors, and other accessories or devices not serving the recognized and customary function of a radio receiving set tube, are not to be included as tubes in advertisements or representations of a radio receiving set which describe or refer to the set as having a certain number of tubes or as being of a specified tube capacity. References to rectifier tubes, and to tubes, devices, or accessories which do not serve as signal amplifying or detecting tubes or heterodyne oscillator tubes, should be such as to clearly avoid misunderstanding or deception of purchasers.)

(l) Advertisements or representations of any radio receiving set, or of any part or accessory therefor whatsoever, in such a manner as deceptively to conceal the true function of such part or in such manner as otherwise to mislead or deceive the purchasing or consuming public in respect to such set or such part or accessory.

(m) Advertisements or representations stating, purporting, or implying that the prices of radio receiving sets, parts or accessories therefor, so advertised or represented, have been reduced or are reduced prices, or have been reduced a certain amount, when in fact such purported or represented price reduction is fictitious, or is otherwise misleading or deceptive.

(n) Advertisements or representations stating, purporting, or implying that radio receiving sets so advertised or represented are of the latest model, when such is not the fact; or advertisements or representations which, directly or indirectly, have the capacity and tendency or effect of leading the purchasing public to believe that the set is of the current year's model or has not been supplanted, superseded, or succeeded by a newer or later model, when such is not true in fact; or advertisements or representations which are otherwise deceptive or misleading respecting the model of the set.

(o) Advertisements or representations of radio receiving sets or prices therefor which deceptively or misleadingly conceal the fact that the advertised price does not cover necessary or advertised accessories or devices which must be purchased with the set at an additional charge; or which falsely or deceptively state or imply that the

advertised price covers such accessories or devices, when such is not the fact.

(p) Advertisements or representations of radio receiving sets which present former prices or so-called list prices which are fictitious.

(q) Advertisements or representations of purported bona fide trade-in allowances when the price of the new set so offered for sale has been deceptively inflated or marked up to offset the trade-in allowance.

RULE 4. *Sponsorship.*

It is an unfair trade practice to use, or cause to be used, advertisements or representations of radio receiving sets, parts or accessories therefor, or of other products of the industry, which have the capacity and tendency or effect of misleading purchasers or the consuming public into the belief that such radio sets, parts, accessories, or products are sponsored or manufactured by, or are otherwise associated with, any person, concern, or organization which is or has been prominent or well known in the electrical or radio industry, or by or with any other person, firm, corporation, or association, when such is not the fact.

RULE 5.

(a) *Alteration of Brand Name.*—The defacement or removal of the correct name plate or brand name of a radio receiving set, or the replacement thereof by another name or mark, when done with the capacity and tendency or effect of thereby misleading or deceiving the purchasing or consuming public in respect to the origin, manufacture, or true name of such set, or in any other material respect, is an unfair trade practice.

(b) *Deceptive Use or Change of Cabinets.*—The placing of a radio receiving set or chassis in a cabinet designed or made for a set or chassis of a different manufacturer or for a set or chassis of a different size, type, or model, when done with the capacity and tendency or effect of thereby misleading or deceiving the purchasing or consuming public as to the origin, size, capacity, make, manufacture, brand, or type of such set or cabinet, or when done to mislead or deceive purchasers in any other respect, is an unfair trade practice.

RULE 6. *Imitation of Trade-marks, Trade Names, Etc.*

The imitation or simulation of the trade-marks, trade names, labels, or brands of competitors, with the capacity and tendency or effect of misleading or deceiving the purchasing or consuming public, is an unfair trade practice.

RULE 7. *Commercial Bribery.*

It is an unfair trade practice for a member of the industry directly or indirectly to give or offer to give, or permit or cause to be given,

money or anything of value to agents, employees, or representatives of customers or prospective customers, or to agents, employees, or representatives of competitors' customers or prospective customers, without the knowledge of their employers or principals, as an inducement to influence their employers or principals to purchase or contract to purchase products manufactured or sold by such industry member or the maker of such gift or offer or to influence such employers or principals to refrain from dealing in the products of competitors or from dealing or contracting to deal with competitors.

RULE 8. *"Spiffs," "Push Money," Etc.*

It is an unfair trade practice for any member of the industry, directly or indirectly, to give, pay, or contract to pay, to any clerk or salesperson of any customer-dealer handling two or more competitive brands of radio merchandise, "push money," "spiffs," or any other bonus, gratuity, or payment, as an inducement or encouragement to push or promote the sale of such member's product or products over competing products of other members in the industry.

(a) with the capacity and tendency or effect of thereby causing the purchasing or consuming public, when making purchases of such products, to be misled or deceived into the erroneous belief that such clerk or salesperson is free from any such special interest or influence, or is not so subsidized or paid by such member; or

(b) with the capacity and tendency or effect of thereby hampering and unduly restricting the legitimate, free, and full use and enjoyment of such retail trade outlets for the distribution to the public of competing products; or

(c) with the purpose or effect, directly or indirectly, of otherwise substantially lessening competition or unreasonably restraining trade in the marketing of the products of the industry; or

(d) with the effect of thereby bringing about the granting of an illegally discriminatory service, payment, or price contrary to Section 2 of the Clayton Act as amended by the Act of Congress approved June 19, 1936, known as the Robinson-Patman Act.

Promulgated by the Federal Trade Commission July 22, 1939.

653742-46-15

**TRADE PRACTICE RULES
FOR THE
COTTON CONVERTING INDUSTRY**

PROMULGATED AUGUST 18, 1939

STATEMENT BY THE COMMISSION

Trade practice rules for the Cotton Converting Industry, as herein set forth, are promulgated by the Federal Trade Commission under its trade practice conference procedure.

These rules provide for the elimination and prevention of various unfair methods of competition, unfair or deceptive acts or practices, and other trade abuses, and are directed toward promoting and maintaining fair competitive conditions and protection of purchasers and the public interest. They constitute a revision and extension of the rules which had heretofore been issued by the Commission for this industry on July 21, 1936, and take the place of such previously issued rules.

The industry is composed of converters and integrated producers of cotton piece goods and mixed cotton and rayon goods. Such goods, converted and sold by the members of the industry, embrace fabrics for clothiers' linings; corset, brassiere, and allied trade fabrics; converted curtain and drapery fabrics; shirting fabrics; wash goods fabrics; interlining fabrics; bleached goods; and all other cotton and cotton-mixture fabrics. According to available information, the industry handles at least 51 per cent of the entire production of such goods and has an estimated total volume of annual sales averaging \$500,000,000 or more.

The proceeding for the establishment of trade practice rules was instituted upon application of the industry. In the course thereof a draft of the rules as proposed for the industry was made available upon public notice issued by the Commission to all interested or affected parties, whereby they were afforded opportunity to present their views, including such pertinent information, suggestions, or objections as they desired to submit, and to be heard in the premises. Accordingly, public hearing pursuant to such notice was held in Washington on July 17, 1939, and all matters submitted in the proceeding were duly received and considered.

Thereafter, and upon consideration of the entire proceeding, final action was taken by the Commission whereby it approved and received, respectively, the rules appearing herein under Group I and Group II.

In addition to the rules issued July 21, 1936, which are herein

revised and extended, trade practice rules for various branches of this industry had theretofore been published under the auspices of the Commission as follows: Clothing Cotton Converting, September 1, 1931; Shirting Fabrics, December 14, 1931; and All-Cotton Wash Goods, June 30, 1933. The present rules, as now promulgated, provide a consolidated and uniform set of trade practice provisions for the entire membership of the Cotton Converting Industry, and they supersede and take the place of all such previously published rules which had formerly been in effect.

THE RULES

(NOTE.—The rules do not supplant, or relieve any member of the industry or other party of the necessity of complying with, applicable fiber identification rules and other pertinent Group I rules approved and promulgated by the Federal Trade Commission.)

GROUP I*

RULE 1. *Misrepresentation of Industry Products.*

It is an unfair trade practice to make or publish, or cause to be made or published, directly or indirectly, any false, misleading, or deceptive statement or representation, by way of advertisement or otherwise, concerning the grade, quality, quantity, use, size, material, content, thread count, origin, shrinkage properties, colorfastness, washability, production, manufacture, or distribution of any product of the industry or concerning any component of such product, or in any other material respect.

RULE 2. *Misbranding.*

The false or deceptive marking or branding of products of the industry with respect to the grade, quality, quantity, use, size, material, content, thread count, origin, shrinkage properties, colorfastness, washability, production, manufacture, or distribution of such products, or in any other material respect, is an unfair trade practice.

RULE 3. *False Invoicing.*

Withholding from or inserting in invoices any statements or information by reason of which omission or insertion a false record is made, wholly or in part, of the transactions represented on the face of such invoices, with the effect of thereby misleading or deceiving purchasers, prospective purchasers, or the consuming public, is an unfair trade practice.

RULE 4. *Deception as to Origin.*

In respect to any fabrics of the following types: (1) fabrics which have been woven or fabricated in a foreign country and imported

* See page VIII for headnote applicable to Group I Rules.

in the gray or other unfinished state and dyed or finished in the United States; or (2) fabrics which have been imported in the finished state and dyed, redyed, or refinished in the United States; *it is an unfair trade practice:*

(a) To offer for sale, sell, or distribute any such fabrics under marks, stamps, brands, labels, or representations which have the capacity and tendency or effect of misleading or deceiving purchasers or the consuming public into the erroneous belief that such fabrics were woven or fabricated in the United States, or that they were not so dyed, finished, redyed, or refinished in the United States, as the case may be; or

(b) To offer for sale, sell, or distribute any such fabrics without the same being marked, stamped, branded, or labeled so as to indicate clearly and nondeceptively (1) the country of origin of the fabric, and (2) that such fabrics were woven or fabricated in such country and were dyed or finished or redyed or refinished in the United States, as the case may be; the failure, refusal, or omission to so mark, stamp, brand, or label such fabrics having the tendency and capacity or result of thereby promoting, abetting, or effectuating the marketing of such products under conditions which are misleading or deceptive to purchasers or the consuming public.

(Nothing in this rule shall be construed as relieving any member of the industry or other party of the necessity of complying with the requirements of the customs laws or regulations, or other applicable provisions of law or regulation, relating to the marking of imported articles.)

RULE 5. *Substitution of Products.*

The practice of shipping or delivering products which do not conform to samples submitted, to specifications upon which the sale is consummated, or to representations made prior to securing the order, without the consent of the purchasers to such substitutions and with the tendency, capacity, or effect of misleading or deceiving purchasers, prospective purchasers, or the consuming public, is an unfair trade practice.

RULE 6. *Inducing Breach of Contract.*

Inducing or attempting to induce the breach of existing lawful contracts between competitors and their customers or their suppliers by any false or deceptive means whatsoever, or interfering with or obstructing the performance of any such contractual duties or services by any such means, with the purpose and effect of unduly hampering, injuring, or prejudicing competitors in their business, is an unfair trade practice.

RULE 7. *Commercial Bribery.*

It is an unfair trade practice for a member of the industry directly or indirectly to give or offer to give, or permit or cause to be given, money or anything of value to agents, employees, or representatives of customers or prospective customers, or to agents, employees, or representatives of competitors' customers or prospective customers, without the knowledge of their employers or principals, as an inducement to influence their employers or principals to purchase or contract to purchase products manufactured or sold by such industry member or the maker of such gift or offer or to influence such employers or principals to refrain from dealing in the products of competitors or from dealing or contracting to deal with competitors.

RULE 8. *Imitation of Trade-marks, Etc.*

The practice of imitating or causing to be imitated, or directly or indirectly promoting or aiding the imitation of, the trade-marks, trade names, or other exclusively owned symbols or marks of identification of competitors, or the exclusively owned patterns of competitors which have not been directly or by operation of law dedicated to the public, having the capacity, tendency, or effect of misleading or deceiving purchasers, prospective purchasers, or the consuming public, is an unfair trade practice.

RULE 9. *Defamation of Competitors or Disparagement of Their Products.*

The defamation of competitors by falsely imputing to them dishonorable conduct, inability to perform contracts, questionable credit standing, or by other false representations, or the false disparagement of the grade, quality, or manufacture of the products of competitors or of their business methods, selling prices, values, credit terms, policies, or services, or conditions of employment, is an unfair trade practice.

RULE 10. *Fictitious Price Lists.*

The publishing or circulating by any member of the industry of false or misleading price quotations, price lists, terms, or conditions of sale, or reports as to production or sales, with the tendency and capacity or effect of misleading or deceiving purchasers, prospective purchasers, or the consuming public, is an unfair trade practice.

RULE 11. *Use of Lottery Schemes.*

The offering or giving of prizes, premiums, or gifts in connection with the sale of industry products, or as an inducement thereto, by any scheme which involves lottery or scheme of chance, is an unfair trade practice.

RULE 12.

(a) Prohibited Discriminatory Prices, or Rebates, Refunds, Discounts, Credits, Etc.,¹ Which Effect Unlawful Price Discrimination.—

It is an unfair trade practice for any member of the industry engaged in commerce,² in the course of such commerce, to grant or allow, secretly or openly, directly or indirectly, any rebate, refund, discount, or credit, or freight or transportation cost or any percentage thereof, or other form of price differential,¹ where such rebate, refund, discount, or credit, or freight or transportation cost or any percentage thereof, or other form of price differential¹ effects a discrimination in price between different purchasers of goods of like grade and quality, where either or any of the purchases involved therein are in commerce,² and where the effect thereof may be substantially to lessen competition or tend to create a monopoly in any line of commerce² or to injure, destroy, or prevent competition with any person who either grants or knowingly receives the benefit of such discrimination or with customers of either of them: *Provided, however—*

(1) That the goods involved in any such transaction are sold for use, consumption, or resale within any place under the jurisdiction of the United States;

(2) That nothing herein contained shall prevent differentials which make only due allowance for differences in the cost of manufacture, sale, or delivery resulting from the differing methods or quantities in which such commodities are to such purchasers sold or delivered;

(3) That nothing herein contained shall prevent persons engaged in selling goods, wares, or merchandise in commerce² from selecting their own customers in bona fide transactions and not in restraint of trade;

(4) That nothing herein contained shall prevent price changes from time to time where made in response to changing conditions affecting either (a) the market for the goods concerned, or (b) the marketability of the goods, such as, but not limited to, actual or imminent deterioration of perishable goods, obsolescence of seasonal goods, distress sales under court process, or sales in good faith in discontinuance of business in the goods concerned.

*(b) Prohibited Brokerage and Commissions.—*It is an unfair trade practice for any member of the industry engaged in commerce,² in the course of such commerce, to pay or grant, or to receive or accept, anything of value as a commission, brokerage, or other compensation, or any allowance or discount in lieu thereof, except for services rendered

¹ Paragraph (a) of Rule 12 shall not be construed as embracing practices prohibited by paragraphs (b), (c), and (d) of this rule.

² See footnote, p. 460.

in connection with the sale or purchase of goods, wares, or merchandise, either to the other party to such transaction or to an agent, representative, or other intermediary therein where such intermediary is acting in fact for or in behalf, or is subject to the direct or indirect control, of any party to such transaction other than the person by whom such compensation is so granted or paid.

*(c) Prohibited Advertising or Promotional Allowances, Etc.—*It is an unfair trade practice for any member of the industry engaged in commerce² to pay or contract for the payment of advertising or promotional allowances or any other thing of value to or for the benefit of a customer of such member in the course of such commerce as compensation or in consideration for any services or facilities furnished by or through such customer in connection with the processing, handling, sale, or offering for sale of any products or commodities manufactured, sold, or offered for sale by such member, unless such payment or consideration is available on proportionally equal terms to all other customers competing in the distribution of such products or commodities.

*(d) Prohibited Discriminatory Services or Facilities.—*It is an unfair trade practice for any member of the industry engaged in commerce² to discriminate in favor of one purchaser against another purchaser or purchasers of a commodity bought for resale, with or without processing, by contracting to furnish or by furnishing, or by contributing to the furnishing of, any services or facilities connected with the processing, handling, sale, or offering for sale of such commodity so purchased upon terms not accorded to all purchasers on proportionally equal terms.

*(e) Inducing or Receiving an Illegal Discrimination in Price.—*It is an unfair trade practice for any member of the industry engaged in commerce,² in the course of such commerce, knowingly to induce or receive a discrimination in price which is prohibited by the foregoing provisions of this Rule 12.

RULE 13. *Aiding or Abetting Use of Unfair Trade Practices.*

It is an unfair trade practice for any person, firm, or corporation to aid, abet, coerce, or induce another, directly or indirectly, to use or promote the use of any unfair trade practice specified in these rules.

GROUP II*

RULE A.

In the interest of the public and of itself, the industry urges all members of the industry to adhere to the practice of not opening

¹ See footnote, p. 460.

* See page VIII for headnote applicable to Group II Rules.

their sales offices on Saturdays and Sundays for the transaction of business.

RULE B.

Lawful contracts are business obligations which should be performed in letter and in spirit. The repudiation of contracts by sellers on a rising market or by buyers on a declining market is condemned by the industry.

RULE C.

When goods are sold by specifications or construction, in order that accurate information regarding the type of goods sold or offered for sale may be known to purchasers, the industry approves the practice of placing on the confirmation of order and on the invoice the gray construction, i. e., gray width, count, and weight, in the case where the goods sold are to be delivered in the gray; and in the case where the goods sold are to be delivered in the finished state, the industry approves the practice of placing on the confirmation of order and invoice the finished construction, i. e., the width, count, and weight in such finished state. The omission from the confirmation of order or invoice of any such information required by this rule is condemned by the industry.

Promulgated by the Federal Trade Commission August 18, 1939.

TRADE PRACTICE RULES FOR THE MARKING DEVICES INDUSTRY PROMULGATED AUGUST 19, 1939

STATEMENT BY THE COMMISSION

Trade practice rules for the Marking Devices Industry, as herein set forth, are promulgated by the Federal Trade Commission under its trade practice conference procedure.

These rules provide for the elimination and prevention of various unfair methods of competition, unfair or deceptive acts or practices, and other trade abuses, and are directed toward promoting and maintaining fair competitive conditions and protection of purchasers and the public interest. They consist of a revision and extension of the rules which had heretofore been issued by the Commission for this industry on September 1, 1933, and take the place of such previously issued rules.

Members of this industry are engaged in the manufacture, sale, and distribution of rubber and metallic stamps and dies, numbering and dating machines, stencils and stencil cutting machines, seals and seal presses, and stamped plates, tags, labels, signs, checks, badges, and numerous other similar articles and products. According to available estimates, the industry, numbering about a thousand concerns, transacts an aggregate annual volume of business amounting to approximately \$15,000,000.

The proceeding for the establishment of trade practice rules was instituted upon application of the industry. In the course thereof a draft of the rules as proposed for the industry was made available upon public notice issued by the Commission to all interested or affected parties, whereby they were afforded opportunity to present their views, including such pertinent information, suggestions, or objections as they desired to submit, and to be heard in the premises. Accordingly, public hearing pursuant to such notice was held in Washington on July 27, 1939, and all matters submitted in the proceeding were duly received and considered.

Thereafter, and upon consideration of the entire proceeding, final action was taken by the Commission whereby it approved and received, respectively, the rules appearing herein under Group I and Group II.

THE RULES

GROUP I*

RULE 1. *Misbranding.*

The false or deceptive marking or branding of products of the industry with respect to the grade, quality, quantity, use, size, material, content, substance, origin, preparation, manufacture, or distribution of such products, or in any other material respect, is an unfair trade practice.

RULE 2. *Misrepresentation of Industry Products.*

It is an unfair trade practice to make or publish, or cause to be made or published, directly or indirectly, any false, misleading, or deceptive statement or representation, by way of advertisement or otherwise, concerning the grade, quality, quantity, use, size, material, content, substance, origin, preparation, manufacture, or distribution of any product of the industry, or in any other material respect.

RULE 3. *Misrepresentation as to Character of Business.*

For any person, firm, or corporation to hold himself or itself out to the public as a manufacturer or wholesaler when such is not the fact, or in any other manner to misrepresent the character, extent, or type of his or its business, is an unfair trade practice.

RULE 4. *Substitution of Products.*

The practice of shipping or delivering products which do not conform to samples submitted, to specifications upon which the sale is consummated, or to representations made prior to securing the order, without the consent of the purchasers to such substitutions and with the tendency, capacity, or effect of misleading or deceiving purchasers, prospective purchasers, or the consuming public, is an unfair trade practice.

RULE 5. *Misuse of Word "Free."*

The use of the word "free," or the equivalent thereof, where not properly or fairly qualified when the article is in fact not free, with the tendency or capacity to mislead or deceive purchasers, prospective purchasers, or the consuming public, is an unfair trade practice.

RULE 6. *Imitation of Trade-marks, Etc.*

The imitation or simulation of the trade-marks, trade names, labels, or brands of competitors, with the tendency and capacity or effect of misleading or deceiving purchasers, prospective purchasers, or the consuming public, is an unfair trade practice.

RULE 7. *False Invoicing.*

Withholding from or inserting in an invoice, billing, or statement

* See page VIII for headnote applicable to Group I Rules.

any material information by reason of which omission or insertion a false record is made, wholly or in part, of the transaction which such invoice or billing or statement purports to represent, with the effect of thereby misleading or deceiving purchasers, prospective purchasers, or the consuming public, is an unfair trade practice.

RULE 8. *False and Misleading Price Quotations.*

The publishing or circulating by any member of the industry of false or misleading price quotations, price lists, terms, or conditions of sale, with the tendency and capacity or effect of misleading or deceiving purchasers, prospective purchasers, or the consuming public, is an unfair trade practice.

RULE 9. *Inducing Breach of Contract.*

Inducing or attempting to induce the breach of existing lawful contracts between competitors and their customers or their suppliers by any false or deceptive means whatsoever, or interfering with or obstructing the performance of any such contractual duties or services by any such means, with the purpose and effect of unduly hampering, injuring, or prejudicing competitors in their businesses, is an unfair trade practice.

RULE 10. *Enticing Away Employees of Competitors.*

Willfully enticing away the employees of competitors, with the purpose and effect of unduly hampering, injuring, or prejudicing competitors in their businesses, is an unfair trade practice.

RULE 11. *Defamation of Competitors or Disparagement of Their Products.*

The defamation of competitors by falsely imputing to them dishonorable conduct, inability to perform contracts, questionable credit standing, or by other false representations, or the false disparagement of the grade, quality, or manufacture of the products of competitors, or of their business methods, selling prices, values, credit terms, policies, or services, or conditions of employment, is an unfair trade practice.

RULE 12. *Unfair Threats of Infringement Suits.*

The circulation of threats of suit for infringement of patents or trade-marks among customers or prospective customers of competitors, not made in good faith but for the purpose or with the effect of harassing or intimidating such customers or prospective customers or of unduly hampering, injuring, or prejudicing competitors in their businesses, is an unfair trade practice.

RULE 13. *Procurement of Competitors' Confidential Information by Unfair Means and Wrongful Use Thereof.*

It is an unfair trade practice for any member of the industry to obtain information concerning the business of a competitor, by bribery of an

employee or agent of such competitor, by false or misleading statements or representations, by the impersonation of one in authority, or by any other unfair means, and to use the information so obtained in such a manner as to injure said competitor in his business or to suppress competition or unreasonably restrain trade.

RULE 14. Commercial Bribery.

It is an unfair trade practice for a member of the industry directly or indirectly to give or offer to give, or permit or cause to be given, money or anything of value to agents, employees, or representatives of customers or prospective customers, or to agents, employees, or representatives of competitors' customers or prospective customers, without the knowledge of their employers or principals, as an inducement to influence their employers or principals to purchase or contract to purchase products manufactured or sold by such industry member or the maker of such gift or offer or to influence such employers or principals to refrain from dealing in the products of competitors or from dealing or contracting to deal with competitors.

RULE 15. Coercing Purchase of One Product as a Prerequisite to the Purchase of Other Products.

The practice of coercing the purchase of one or more products as a prerequisite to the purchase of one or more other products, where the effect may be to substantially lessen competition or tend to create a monopoly or to unreasonably restrain trade, is an unfair trade practice.

RULE 16. Consignment Shipping.

It is an unfair trade practice for any member of the industry to use the practice of shipping goods to dealers or distributors on consignment or pretended consignment for the purpose and with the effect of artificially clogging trade outlets and unduly restricting competitors' use of said trade outlets in getting their goods to consumers through regular channels of distribution, or with such purpose to entirely close said trade outlets to such competitors so as to substantially lessen competition or tend to create a monopoly or to unreasonably restrain trade: *Provided, however,* That nothing herein shall be construed or used as restricting or preventing consignment shipping or marketing of commodities in good faith and without artificial interference with competitors' use of the usual channels of distribution in such manner as thereby to suppress competition or restrain trade.

RULE 17. Selling Below Cost.

The practice of selling industry products below the seller's cost, when pursued with wrongful intent of thereby injuring a competitor and where the effect of such practice is to unreasonably restrain trade, tend to create a monopoly, or substantially lessen competition, is an unfair trade practice.

This rule is not to be construed as prohibiting all sales below cost, but only such selling below the seller's cost as is resorted to and pursued as a monopolistic practice with the wrongful intent referred to and coupled with the effect of unreasonably restraining trade, tending to create a monopoly, or substantially lessening competition. Sales below cost by a competitor not in a sufficiently strong competitive position to produce, and not actually producing, the monopolistic or restraining effect mentioned, do not fall within the inhibitions of this rule.

The costs referred to in the rule are actual costs of the respective seller and not some other figure or average costs in the industry, determined by an industry cost survey or otherwise.

RULE 18. Unlawful Interference.

It is an unfair trade practice for any member of the industry, by means of any monopolistic practices, or through combination, conspiracy, coercion, boycott, threats, or any other unlawful means, directly or indirectly, to interfere with a competitor's right to purchase his materials and supplies from whomsoever he chooses, or to sell to whomsoever he chooses.

RULE 19.

(a) Prohibited Discriminatory Prices, or Rebates, Refunds, Discounts, Credits, Etc.,¹ Which Effect Unlawful Price Discrimination.—

It is an unfair trade practice for any member of the industry engaged in commerce,² in the course of such commerce, to grant or allow, secretly or openly, directly or indirectly, any rebate, refund, discount, credit, or other form of price differential,¹ where such rebate, refund, discount, credit, or other form of price differential effects a discrimination in price between different purchasers of goods of like grade and quality, where either or any of the purchases involved therein are in commerce,² and where the effect thereof may be substantially to lessen competition or tend to create a monopoly in any line of commerce,² or to injure, destroy, or prevent competition with any person who either grants or knowingly receives the benefit of such discrimination or with customers of either of them: *Provided, however—*

(1) That the goods involved in any such transaction are sold for use, consumption, or resale within any place under the jurisdiction of the United States;

(2) That nothing herein contained shall prevent differentials which make only due allowance for differences in the cost of manufacture, sale, or delivery resulting from the differing methods or quantities in which such commodities are to such purchasers sold or delivered;

(3) That nothing herein contained shall prevent persons en-

¹ Paragraph (a) of Rule 19 shall not be construed as embracing practices prohibited by paragraphs (b), (c), and (d) of this rule.

² See footnote, p. 460.

gaged in selling goods, wares, or merchandise in commerce² from selecting their own customers in bona fide transactions and not in restraint of trade;

(4) That nothing herein contained shall prevent price changes from time to time where made in response to changing conditions affecting either (a) the market for the goods concerned, or (b) the marketability of the goods, such as, but not limited to, actual or imminent deterioration of perishable goods, obsolescence of seasonal goods, distress sales under court process, or sales in good faith in discontinuance of business in the goods concerned.

(b) *Prohibited Brokerage and Commissions.*—It is an unfair trade practice for any member of the industry engaged in commerce,² in the course of such commerce, to pay or grant, or to receive or accept, anything of value as a commission, brokerage, or other compensation, or any allowance or discount in lieu thereof, except for services rendered in connection with the sale or purchase of goods, wares, or merchandise, either to the other party to such transaction or to an agent, representative, or other intermediary therein where such intermediary is acting in fact for or in behalf, or is subject to the direct or indirect control, of any party to such transaction other than the person by whom such compensation is so granted or paid.

(c) *Prohibited Advertising or Promotional Allowances, Etc.*—It is an unfair trade practice for any member of the industry engaged in commerce² to pay or contract for the payment of advertising or promotional allowances or any other thing of value to or for the benefit of a customer of such member in the course of such commerce as compensation or in consideration for any services or facilities furnished by or through such customer in connection with the processing, handling, sale, or offering for sale of any products or commodities manufactured, sold, or offered for sale by such member, unless such payment or consideration is available on proportionally equal terms to all other customers competing in the distribution of such products or commodities.

(d) *Prohibited Discriminatory Services or Facilities.*—It is an unfair trade practice for any member of the industry engaged in commerce² to discriminate in favor of one purchaser against another purchaser or purchasers of a commodity bought for resale, with or without processing, by contracting to furnish or by furnishing, or by contributing to the furnishing of, any services or facilities connected with the processing, handling, sale, or offering for sale of such commodity so purchased upon terms not accorded to all purchasers on proportionally equal terms.

² See footnote, p. 460.

(e) *Inducing or Receiving an Illegal Discrimination in Price.*—It is an unfair trade practice for any member of the industry engaged in commerce,² in the course of such commerce, knowingly to induce or receive a discrimination in price which is prohibited by the foregoing provisions of this Rule 19.

RULE 20. *Aiding or Abetting Use of Unfair Trade Practices.*

It is an unfair trade practice for any person, firm, or corporation to aid, abet, coerce, or induce another, directly or indirectly, to use or promote the use of any unfair trade practice specified in these rules.

GROUP II*

RULE A. *Publication of Price Lists.*

The industry approves the practice of each individual member of the industry independently publishing and circulating to the purchasing trade his own price lists fully setting forth his terms of sale.

RULE B. *Return of Merchandise.*

The practice, by members of the industry, of selling merchandise and later permitting the purchaser to return it for credit or refund of purchase price, without just cause, creates waste and loss, increases the cost of doing business, to the detriment of both the industry and the public, and is condemned by the industry, subject, however, to the general limitation that members of the industry shall not engage in any combination or conspiracy in restraint of trade or use any other illegal methods in the regulation, control, or prevention of the return of merchandise.

RULE C. *Repudiation of Contracts.*

Lawful contracts are business obligations which should be performed in letter and in spirit. The repudiation of contracts by sellers on a rising market or by buyers on a declining market is condemned by the industry.

RULE D. *Arbitration.*

The industry approves the practice of handling business disputes between members of the industry and their customers in a fair and reasonable manner, coupled with a spirit of moderation and good will, and every effort should be made by the disputants themselves to compose their differences. If unable to do so they should, if possible, submit these disputes to arbitration.

Promulgated by the Federal Trade Commission August 19, 1939.

² See footnote, p. 460.

* See page VIII for headnote applicable to Group II Rules.

TRADE PRACTICE RULES
FOR THE
PUBLIC SEATING INDUSTRY
PROMULGATED OCTOBER 3, 1939

STATEMENT BY THE COMMISSION

Trade practice rules for the Public Seating Industry, as hereinafter set forth, are promulgated by the Federal Trade Commission under its trade practice conference procedure.

The rules provide for the elimination and prevention of false advertising, deceptive selling methods, and certain other unfair trade practices, and are issued in the interest of protecting the purchasing public and maintaining fair competitive conditions in the industry. They constitute a revision and extension of the rules which had heretofore been issued by the Commission for this industry on June 23, 1931, and take the place of such previously issued rules.

The products of the industry to which the rules relate include fixed or connected seating for such public places as theaters, auditoriums, lodges, assembly halls, shoe stores, stadia, and other similar buildings and structures; various types of pewing, chancels, choir stalls and related furniture and accessories for ecclesiastical purposes; seats and benches for courthouses, hospitals, etc.; various types of school furniture; portable chairs with folding seats in both single and multiple units and portable folding seating in single units for other than household use. These products are fabricated or assembled from wood, plywood, iron, steel, non-ferrous metals, or any combination of these materials. Members of the industry are engaged in manufacturing or distributing the above-mentioned products. The manufacturers' sales aggregate approximately \$25,000,000 annually, according to information furnished the Commission.

The proceeding for the establishment of new trade practice rules was instituted upon application of the industry. In the course thereof a draft of the rules as proposed for the industry was made available upon public notice issued by the Commission to all interested or affected parties, affording them opportunity to present their views, including such pertinent information, suggestions or objections as they desired to submit, and to be heard in the premises. Accordingly, public hearing pursuant to such notice was held in Washington on August 17, 1939, and all matters submitted in the proceeding were duly received and considered.

Thereafter, and upon consideration of the entire matter, final action

was taken by the Commission whereby it approved and received, respectively, the rules appearing herein under Group I and Group II.

THE RULES

GROUP I*

RULE 1. *Misrepresentation of Industry Products.*

It is an unfair trade practice to make or publish, or cause to be made or published, directly or indirectly, any false, misleading or deceptive statement or representation (whether in the form of advertisement, label, brand, guarantee, warranty, testimonial, endorsement, depiction, illustration, or other form of representation, however disseminated or published):

- (a) Concerning the grade, quality, quantity, substance, character, nature, origin, size or preparation of any products of the Public Seating Industry; or
- (b) Concerning the manufacture, sale or distribution of any such products; or
- (c) Concerning any other matter in relation to such products.

RULE 2. *False Invoicing.*

Withholding from or inserting in invoices or sales tickets any statements or information by reason of which omission or insertion a false record is made, wholly or in part, of the transactions represented on the face of such invoices or sales tickets, with the effect of thereby misleading or deceiving the purchasing or consuming public, is an unfair trade practice.

RULE 3. *Use of False or Deceptive Selling Methods, Etc.*

The use of false or deceptive selling methods which have the tendency and capacity or effect of misleading or deceiving the purchasing or consuming public is an unfair trade practice.

RULE 4. *Misuse of Terms "Close-outs," "Obsolete Items," "Discontinued Lines," Etc.*

It is an unfair trade practice to advertise, describe or otherwise represent regular lines of merchandise as "Close-outs," "Obsolete Items," "Discontinued Lines," or by words or representations of similar import, when such are not true in fact; or to so advertise, describe or otherwise represent merchandise where the capacity and tendency or effect thereof is to lead the purchasing or consuming public to believe such merchandise is being offered for sale and sold at greatly reduced prices or at so-called "bargain" prices, when such is not the fact.

* See page VIII for headnote applicable to Group I Rules.
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RULE 5. *Defamation of Competitors or Disparagement of Their Products.*

The defamation of competitors by falsely imputing to them dishonorable conduct, inability to perform contracts, questionable credit standing, or by other false representations, or the false disparagement of the grade, quality or manufacture of the products of competitors or of their business methods, selling prices, values, credit terms, policies, or services, is an unfair trade practice.

RULE 6. *Commercial Bribery.*

It is an unfair trade practice for a member of the industry, directly or indirectly, to give, or offer to give, or permit or cause to be given, money or anything of value to agents, employees or representatives of customers or prospective customers, or to agents, employees or representatives of competitors' customers or prospective customers, without the knowledge of their employers or principals, as an inducement to influence their employers or principals to purchase or contract to purchase public seating products manufactured or sold by such industry member or the maker of such gift or offer, or to influence such employers or principals to refrain from dealing in the products of competitors or from dealing or contracting to deal with competitors.

RULE 7. *Unfair Threats of Infringement Suits.*

The circulation of threats of suit for infringement of patents or trade-marks among customers or prospective customers of competitors, not made in good faith but for the purpose or with the effect of harassing or intimidating such customers or prospective customers, or of unduly hampering, injuring, or prejudicing competitors in their businesses, is an unfair trade practice.

RULE 8. *Procurement of Competitors' Confidential Information by Unfair Means and Wrongful Use Thereof.*

It is an unfair trade practice for any member of the industry to obtain information concerning the business of a competitor, by bribery of an employee or agent of such competitor, by false or misleading statements or representations, by the impersonation of one in authority, or by any other unfair means, and to use the information so obtained in such a manner as to injure said competitor in his business or to suppress competition or unreasonably restrain trade.

RULE 9. *Inducing Breach of Contract.*

Inducing or attempting to induce the breach of existing lawful contracts between competitors and their customers or their suppliers by any false or deceptive means whatsoever, or interfering with or obstructing the performance of any such contractual duties or services by any such means, with the purpose and effect of unduly hampering,

injuring, or prejudicing competitors in their businesses, is an unfair trade practice.

RULE 10. *Enticing Away Employees of Competitors.*

Wilfully enticing away the employees of competitors, with the purpose and effect of unduly hampering, injuring, or prejudicing competitors in their businesses, is an unfair trade practice.

RULE 11. *Substitution of Products.*

The practice of shipping or delivering products which do not conform to samples submitted, to specifications upon which the sale is consummated, or to representations made prior to securing the order, without the consent of the purchasers to such substitutions and with the tendency, capacity, or effect of misleading or deceiving purchasers, prospective purchasers, or the consuming public, is an unfair trade practice.

RULE 12.

(a) *Prohibited Discriminatory Prices, or Rebates, Refunds, Discounts, Credits, Etc.,¹ Which Effect Unlawful Price Discrimination.*

It is an unfair trade practice for any member of the industry engaged in commerce,² in the course of such commerce, to grant or allow, secretly or openly, directly or indirectly, any rebate, refund, discount, credit, or other form of price differential,¹ where such rebate, refund, discount, credit, or other form of price differential effects a discrimination in price between different purchasers of goods of like grade and quality, where either or any of the purchases involved therein are in commerce,² and where the effect thereof may be substantially to lessen competition or tend to create a monopoly in any line of commerce,² or to injure, destroy, or prevent competition with any person who either grants or knowingly receives the benefit of such discrimination or with customers of either of them: *Provided, however—*

(1) That the goods involved in any such transaction are sold for use, consumption, or resale within any place under the jurisdiction of the United States;

(2) That nothing herein contained shall prevent differentials which make only due allowance for differences in the cost of manufacture, sale, or delivery resulting from the differing methods or quantities in which such commodities are to such purchasers sold or delivered;

(3) That nothing herein contained shall prevent persons engaged in selling goods, wares, or merchandise in commerce² from selecting their own customers in bona fide transactions and not in

¹ Paragraph (a) of Rule 12 shall not be construed as embracing practices prohibited by paragraphs (b), (c), and (d) of this rule.

² See footnote, p. 460.

restraint of trade;

(4) That nothing herein contained shall prevent price changes from time to time where made in response to changing conditions affecting either (a) the market for the goods concerned, or (b) the marketability of the goods, such as, but not limited to, actual or imminent deterioration of perishable goods, obsolescence of seasonal goods, distress sales under court process, or sales in good faith in discontinuance of business in the goods concerned.

(b) *Prohibited Brokerage and Commissions.*—It is an unfair trade practice for any member of the industry engaged in commerce,² in the course of such commerce, to pay or grant, or to receive or accept, anything of value as a commission, brokerage, or other compensation, or any allowance or discount in lieu thereof, except for services rendered in connection with the sale or purchase of goods, wares, or merchandise, either to the other party to such transaction or to an agent, representative, or other intermediary therein where such intermediary is acting in fact for or in behalf, or is subject to the direct or indirect control, of any party to such transaction other than the person by whom such compensation is so granted or paid.

(c) *Prohibited Advertising or Promotional Allowances, Etc.*—It is an unfair trade practice for any member of the industry engaged in commerce² to pay or contract for the payment of advertising or promotional allowances or any other thing of value to or for the benefit of a customer of such member in the course of such commerce as compensation or in consideration for any services or facilities furnished by or through such customer in connection with the processing, handling, sale, or offering for sale of any products or commodities manufactured, sold, or offered for sale by such member, unless such payment or consideration is available on proportionally equal terms to all other customers competing in the distribution of such products or commodities.

(d) *Prohibited Discriminatory Services or Facilities.*—It is an unfair trade practice for any member of the industry engaged in commerce² to discriminate in favor of one purchaser against another purchaser or purchasers of a commodity bought for resale, with or without processing, by contracting to furnish or by furnishing, or by contributing to the furnishing of, any services or facilities connected with the processing, handling, sale, or offering for sale of such commodity so purchased upon terms not accorded to all purchasers on proportionally equal terms.

(e) *Inducing or Receiving an Illegal Discrimination in Price.*—It is an unfair trade practice for any member of the industry engaged in commerce,² in the course of such commerce, knowingly to induce or

² See footnote, p. 460.

receive a discrimination in price which is prohibited by the foregoing provisions of this Rule 12.

(f) *Purchases by Schools, Colleges, Universities, Public Libraries, Churches, Hospitals, and Charitable Institutions Not Operated for Profit.*—The foregoing provisions of this Rule 12 relate to practices within the purview of the Robinson-Patman Antidiscrimination Act, which Act and the application thereunder of this Rule 12 are subject to the limitations expressed in the amendment to such Robinson-Patman Antidiscrimination Act, which amendment was approved May 26, 1938, and reads as follows:

"Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That nothing in the Act approved June 19, 1936 (Public, Numbered 692, Seventy-fourth Congress, second session), known as the Robinson-Patman Antidiscrimination Act, shall apply to purchases of their supplies for their own use by schools, colleges, universities, public libraries, churches, hospitals, and charitable institutions not operated for profit." (52 Stat. 446; Supp. 4 U. S. C. Title 15, Sec. 13c.)

RULE 13. *Aiding or Abetting Use of Unfair Trade Practices.*

It is an unfair trade practice for any person, firm or corporation to aid, abet, coerce or induce another, directly or indirectly, to use or promote the use of any unfair trade practice specified in these rules.

GROUP II*

RULE A. *Maintenance of Accurate Records.*

It is the judgment of the industry that each member should independently keep proper and accurate records for determining his costs.

RULE B. *Blind Bids.*

In cases of competitive bidding, the practice of receiving or making so-called "blind bids," which discount the lowest competitive bid regardless of the amount, tends to destroy competitive bidding, and is condemned by the industry.

A Committee on Trade Practices is hereby created by the industry to cooperate with the Federal Trade Commission and to perform such acts as may be legal and proper to put these rules into effect.

Promulgated by the Federal Trade Commission October 3, 1939.

* See page VIII for headnote applicable to Group II Rules.

TRADE PRACTICE RULES

FOR THE

CURLED HAIR INDUSTRY

PROMULGATED JANUARY 12, 1940

STATEMENT BY THE COMMISSION

Trade practice rules for the Curled Hair Industry, as hereinafter set forth, are promulgated by the Federal Trade Commission under its trade practice conference procedure.

The purpose of the rules is to protect industry, trade, and the purchasing public from unfair trade practices in respect to curled hair and curled hair mixtures in the several forms and products in which it is used and passed through the channels of distribution and trade to users, re-sellers, and ultimate consumers.

The curled hair used in the industry consists, mainly, of horse mane, horse tail, cattle tail and hog hair. Two or more different kinds of hair are frequently mixed or blended together, and sometimes vegetable fiber, such as sisal, kapok, tampico, or other fiber, is also mixed with the hair. After processing, mixing and curling, the hair, or hair and fiber, is sold in bulk, interlaced on burlap, or in molded form, for use by manufacturers and others as filling, stuffing or padding material, chiefly in mattresses and upholstered furniture. Such manufactured articles containing curled hair are marketed by their manufacturers, and by distributors and dealers, to the general public, and thus the curled hair product of the industry reaches and is used by ultimate purchasers or consumers mainly as constituent parts of filled, stuffed or padded merchandise.

In the main, the cattle and hog hair used by the industry is of domestic production, whereas horse mane and horse tail are imported and come chiefly from South America. According to information furnished the Commission, the volume of initial sales in the industry totals about 8,000,000 pounds annually, valued at approximately \$3,000,000.

The proceeding for the establishment of trade practice rules was instituted upon application of the industry. In the course thereof a draft of rules as proposed for the industry was made available upon public notice issued by the Commission to all interested or affected parties, whereby they were afforded opportunity to present their views to the Commission, including such pertinent information, suggestions or objections as they desired to submit, and to be heard in the premises. Accordingly, public hearing pursuant to such notice was held in Wash-

ington, D. C., and all matters presented at the hearing, or otherwise submitted, were duly received and considered.

Thereafter, and upon consideration of the entire proceeding, the rules appearing herein under Group I were given final approval by the Commission and are promulgated as follows:

THE RULES

GROUP I*

RULE 1. *Misbranding.*

The false or deceptive marking or branding of products of the industry with respect to the grade, quality, quantity, use, size, material, content, substance, new or secondhand condition, origin, preparation, manufacture, or distribution of such products, or in any other material respect, is an unfair trade practice.

RULE 2. *Misrepresentation of Industry Products.*

It is an unfair trade practice to make or publish, or cause to be made or published, directly or indirectly, any false, misleading, or deceptive statement or representation, by way of advertisement or otherwise, concerning the grade, quality, quantity, use, size, material, content, substance, origin, new or secondhand condition, preparation, manufacture, or distribution of any product of the industry, or in any other material respect.

RULE 3. *Deceptive Nondisclosure.*

(a) *Nondisclosure of Secondhand Hair or Fiber.*—To sell or offer for sale any industry product containing, in whole or in part, any hair or fiber which has previously been used in any article or for any purpose, without making full and nondeceptive disclosure in selling literature, tags, or labels, and in invoices, of the fact that such hair or fiber is secondhand or used, is an unfair trade practice.

(b) *Nondisclosure of Kind of Hair.*—To the end that purchasers may be correctly informed and that unfair methods of competition and unfair or deceptive acts or practices may be avoided and prevented in the sale or offering for sale of curled hair or curled hair products, full and nondeceptive disclosure should be made by members of the industry in selling literature, tags, or labels, and in invoices, of the kind of hair contained in said merchandise sold or offered for sale by them, whether horse tail, cattle tail, horse mane, hog, or other kind of hair, together with the proportion of each kind of hair contained therein; and it is an unfair trade practice to fail or refuse to make such disclosure to purchasers where such nondisclosure or the concealment

* See page VIII for headnote applicable to Group I Rules.

of the kind of hair contained in the product is practiced by the seller with the tendency and capacity or effect of thereby misleading or deceiving purchasers or the consuming public.

(c) *Nondisclosure of Vegetable Fiber, Etc.*—The concealment of, or the failure to disclose, the kind and proportion of any vegetable fiber or material other than hair contained in any curled hair or purported curled hair product sold by members of the industry, with the tendency and capacity or effect of thereby misleading or deceiving purchasers or the consuming public, is also an unfair trade practice.

RULE 4. Misuse of the Term "Hair," Etc.

The use of the word "hair" to describe any industry product consisting of hair mixed with sisal, tampico, kapok, or other vegetable fibers, without disclosure of the proportion and kind of hair and of vegetable fibers present in the product, with the tendency and capacity or effect of misleading or deceiving the purchasing or the consuming public, or the use of the term "hair" or word, term, or representation of similar import in any false, misleading, or deceptive manner whatsoever, is an unfair trade practice.

RULE 5. Substitution of Products.

The practice of shipping or delivering products which do not conform to samples submitted, to specifications upon which the sale is consummated, or to representations made prior to securing the order, without the consent of the purchasers to such substitutions and with the tendency and capacity or effect of misleading or deceiving the purchasing or consuming public, is an unfair trade practice.

RULE 6. False Invoicing.

Withholding from or inserting in an invoice, billing, or statement any material information by reason of which omission or insertion a false record is made, wholly or in part, of the transaction which such invoice or billing or statement purports to represent, with the effect of thereby misleading or deceiving the purchasing or consuming public, is an unfair trade practice.

RULE 7. Imitation or Simulation of Trade-marks, Trade Names, Etc.

The imitation or simulation of the trade-marks, trade names, labels or brands of competitors, with the tendency and capacity or effect of misleading or deceiving the purchasing or consuming public, is an unfair trade practice.

RULE 8. Commercial Bribery.

It is an unfair trade practice for a member of the industry, directly or indirectly, to give, or offer to give, or permit or cause to be given, money or anything of value to agents, employees, or representatives of customers or prospective customers, or to agents, employees, or repre-

sentatives of competitors' customers or prospective customers, without the knowledge of their employers or principals, as an inducement to influence their employers or principals to purchase or contract to purchase products manufactured or sold by such industry member or the maker of such gift or offer, or to influence such employers or principals to refrain from dealing in the products of competitors or from dealing or contracting to deal with competitors.

RULE 9. Defamation of Competitors or Disparagement of Their Products.

The defamation of competitors by falsely imputing to them dishonorable conduct, inability to perform contracts, questionable credit standing, or by other false representations, or the false disparagement of the grade, quality, or manufacture of the products of competitors, or of their business methods, selling prices, values, credit terms, policies, or services, is an unfair trade practice.

RULE 10. Inducing Breach of Contract.

Inducing or attempting to induce the breach of existing lawful contracts between competitors and their customers or their suppliers by any false or deceptive means whatsoever, or interfering with or obstructing the performance of any such contractual duties or services by any such means, with the purpose and effect of unduly hampering, injuring, or prejudicing competitors in their businesses, is an unfair trade practice.

RULE 11.

(a) *Prohibited Discriminatory Prices, or Rebates, Refunds, Discounts, Credits, Etc., Which Effect Unlawful Price Discrimination.*—It is an unfair trade practice for any member of the industry engaged in commerce,¹ in the course of such commerce, to grant or allow, secretly or openly, directly or indirectly, any rebate, refund, discount, credit, or other form of price differential, where such rebate, refund, discount, credit, or other form of price differential effects a discrimination in price between different purchasers of goods of like grade and quality, where either or any of the purchases involved therein are in commerce,¹ and where the effect thereof may be substantially to lessen competition or tend to create a monopoly in any line of commerce,¹ or to injure, destroy, or prevent competition with any person who either grants or knowingly receives the benefit of such discrimination or with customers of either of them: *Provided, however*—

(1) That the goods involved in any such transaction are sold for use, consumption, or resale within any place under the jurisdiction of the United States;

(2) That nothing herein contained shall prevent differentials which make only due allowance for differences in the cost of manu-

¹ See footnote, p. 460.

facture, sale, or delivery resulting from the differing methods or quantities in which such commodities are to such purchasers sold or delivered;

(3) That nothing herein contained shall prevent persons engaged in selling goods, wares, or merchandise in commerce¹ from selecting their own customers in bona fide transactions and not in restraint of trade;

(4) That nothing herein contained shall prevent price changes from time to time where made in response to changing conditions affecting either (a) the market for the goods concerned, or (b) the marketability of the goods, such as, but not limited to, actual or imminent deterioration of perishable goods, obsolescence of seasonal goods, distress sales under court process, or sales in good faith in discontinuance of business in the goods concerned.

(b) *Prohibited Brokerage and Commissions.*—It is an unfair trade practice for any member of the industry engaged in commerce,¹ in the course of such commerce, to pay or grant, or to receive or accept, anything of value as a commission, brokerage, or other compensation, or any allowance or discount in lieu thereof, except for services rendered in connection with the sale or purchase of goods, wares, or merchandise, either to the other party to such transaction or to an agent, representative, or other intermediary therein where such intermediary is acting in fact for or in behalf, or is subject to the direct or indirect control, of any party to such transaction other than the person by whom such compensation is so granted or paid.

(c) *Prohibited Advertising or Promotional Allowances, Etc.*—It is an unfair trade practice for any member of the industry engaged in commerce¹ to pay or contract for the payment of advertising or promotional allowances or any other thing of value to or for the benefit of a customer of such member in the course of such commerce as compensation or in consideration for any services or facilities furnished by or through such customer in connection with the processing, handling, sale, or offering for sale of any products or commodities manufactured, sold, or offered for sale by such member, unless such payment or consideration is available on proportionally equal terms to all other customers competing in the distribution of such products or commodities.

(d) *Prohibited Discriminatory Services or Facilities.*—It is an unfair trade practice for any member of the industry engaged in commerce¹ to discriminate in favor of one purchaser against another purchaser or purchasers of a commodity bought for resale, with or without processing, by contracting to furnish or by furnishing, or by contributing to the furnishing of, any services or facilities connected with the processing, handling, sale, or offering for sale of such commodity so

¹ See footnote, p. 460.

purchased upon terms not accorded to all purchasers on proportionally equal terms.

(e) *Inducing or Receiving an Illegal Discrimination in Price.*—It is an unfair trade practice for any member of the industry engaged in commerce,¹ in the course of such commerce, knowingly to induce or receive a discrimination in price which is prohibited by the foregoing provisions of this Rule 11.

(f) *Purchases by Schools, Colleges, Universities, Public Libraries, Churches, Hospitals, and Charitable Institutions Not Operated for Profit.*—The foregoing provisions of this Rule 11 relate to practices within the purview of the Robinson-Patman Antidiscrimination Act, which Act and the application thereunder of this Rule 11 are subject to the limitations expressed in the amendment to such Robinson-Patman Antidiscrimination Act, which amendment was approved May 26, 1938, and reads as follows:

"Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That nothing in the Act approved June 19, 1936 (Public, Numbered 692, Seventy-fourth Congress, second session), known as the Robinson-Patman Antidiscrimination Act, shall apply to purchases of their supplies for their own use by schools, colleges, universities, public libraries, churches, hospitals, and charitable institutions not operated for profit." (52 Stat. 446; Supp. 4 U. S. C. Title 15, Sec. 13c.)

Promulgated by the Federal Trade Commission January 12, 1940.

¹ See footnote, p. 460.

TRADE PRACTICE RULES

FOR THE

SARDINE INDUSTRY

PROMULGATED MARCH 5, 1940

STATEMENT BY THE COMMISSION

Trade practice rules for the Sardine Industry, as hereinafter set forth, are promulgated by the Federal Trade Commission under its trade practice conference procedure.

The rules relate to the sale and distribution of sardines, processed or canned, and of sardine oil, meal, and other sardine products, by processors, canners or packers, and by jobbers, distributors, dealers, importers, or other marketers. As promulgated, the provisions are directed to the elimination and prevention of misrepresentation, deceptive concealment, and various other unfair trade practices, and are issued in the interest of protecting industry, trade, and the public from the harmful effects of such unfair methods or practices.

Based on the most recent statistics available, the industry's annual pack of sardines in the United States is around 3,000,000 cases, and the annual domestic production of sardine oil and meal runs around 18,000,000 gallons of oil and close to 100,000 tons of meal. The combined sales value per annum to the producers of these products is reported to be approximately \$18,000,000.

The proceeding for the establishment of trade practice rules was instituted upon application of the industry. In the course thereof a general trade practice conference was held in San Francisco under the auspices of the Commission. Subsequently, a draft of proposed rules for the industry was made available upon public notice issued by the Commission to all interested or affected parties, whereby they were afforded opportunity to present their views to the Commission, including such pertinent information, suggestions, or objections as they desired to submit, and to be heard in the premises. Accordingly, public hearing pursuant to such notice was held in Washington, D. C. Thereafter, and upon consideration of the entire matter, final action was taken by the Commission whereby it approved and received, respectively, the rules appearing herein under Group I and Group II.

These rules do not in any respect supplant, or relieve anyone of the necessity of complying with, the legal requirements of the pure food laws, or other provision of law. They are established under statutes administered by the Federal Trade Commission for the purpose of more effectively stamping out unfair practices in the interest of the public,

and to assist in general law enforcement to this end. They are not to be used, directly or indirectly, as part of or in connection with any combination or agreement to fix prices, or for the suppression of competition, or otherwise to unreasonably restrain trade.

THE RULES

GROUP I*

RULE I. *Definitions.*

For the purpose of these rules and in their application the following definitions shall apply:

(a) *Improper Packing.*—Canned sardines shall be deemed to be improperly packed (1) if they contain any deleterious, decomposed or otherwise unfit food; or (2) if they are not prepared and packed under strict sanitary conditions conformable to the rules and regulations of appropriate Federal and State authorities; or (3) if the cans are not well filled with whole fish of good quality, properly cleaned and with heads removed; or (4) if the canned product contains any adulterant or the canning or packing thereof is defective in any other respect; or (5) if the can used is so made, formed, or filled as to be misleading.

Where sauce or oil is used in packing sardines, the quantity should be sufficient to fill the interstices in the can fully packed with the fish. Any tomato or mustard sauce or other sauce or oil used in packing sardines shall be made from sound and wholesome ingredients and shall contain no starches or other thickening, nor any adulterating agents, nor any other material or ingredient which may be deleterious, decomposed, putrid, or harmful.

(b) *Natural Style.*—Canned sardines described or designated as "Natural Style" shall be deemed to be sardines which may or may not be salted or brined but which are packed without the addition of any sauce, oil, condiment, or flavoring agent.

(c) *Seconds.*—The term "Seconds" shall be construed as including any canned sardines of which the can is overfilled abnormally, even though such sardines are otherwise properly packed. The term shall also be construed as including canned sardines in which the cans are dented, spotted, rusty, or otherwise defective; *provided, however,* that if the sardines are spoiled or in any way adulterated or unfit for human or animal consumption they shall not be sold or distributed at all for such consumption, irrespective of whether or not they are designated by the canner, distributor, dealer, or other seller as being "Seconds."

* See page VIII for headnote applicable to Group I Rules.

RULE 2. Sardines Unfit for Use.

It is an unfair trade practice to offer for sale, sell, or promote the sale of canned sardines for human consumption or as food for animals when, for any reason, such product is or has become unfit for such human or animal consumption.

RULE 3. Misuse of Words "Natural Style," Etc.

It is an unfair trade practice in the sale or distribution of canned sardines to use the term "Natural Style" as descriptive of any such sardines, or to otherwise represent them as being "Natural Style" sardines, when such is not true in fact, or when such use of the term or such representation is in any other respect false, misleading, or deceptive.

RULE 4. Misrepresenting "Seconds," Etc.

In the sale or distribution of canned sardines which are "Seconds," it is an unfair trade practice to cause the same to be represented or sold (a) as or for sardines of a higher grade or quality; or (b) as not being such "Seconds;" or (c) under conditions of deceptive concealment of the fact that the products are "Seconds;" or (d) to offer for sale, sell, or distribute such "Seconds" without full and nondeceptive disclosure of the fact that such products are "Seconds" made clearly and unequivocally in all display or descriptive matter used in the sale or distribution of the products.

(NOTE.—To avoid deceptive concealment or the capacity and tendency or effect of misleading the purchasing public, all sardine products which are "Seconds" should be clearly and indelibly marked as "Seconds," and the fact they are "Seconds" should be clearly disclosed in all representations used in connection with their sale or distribution; moreover, such products should not be marketed at all for consumption of man or animals when the same are unfit for such human or animal consumption, respectively, or when the marketing thereof is contrary to the provisions of any applicable laws or governmental regulations.)

RULE 5. Misrepresentation of Industry Products.

The practice of selling, advertising, describing, or otherwise representing canned sardines, sardine oil or meal, or related products, in a manner which is calculated to mislead or deceive or has the capacity and tendency or effect of misleading or deceiving the purchasing or consuming public with respect to the character, nature, content, brand, grade, quality, quantity, origin, substance, material, size, preparation, packing, distribution, or manufacture of such products, or ingredients thereof, or in any other material respect, is an unfair trade practice.

RULE 6. Deceptive Depictions.

It is an unfair trade practice to use in relation to industry products any photograph, cut, engraving, insignia, design, illustration, or pictorial or other depiction or device, (in catalogs, sales literature, adver-

tisements, or other representations), which has the capacity and tendency or effect of misleading or deceiving the purchasing or consuming public respecting the character, nature, content, brand, grade, quality, quantity, origin, substance, material, size, preparation, packing, distribution, or manufacture of any products of the industry, or ingredients thereof; or which is false, misleading, or deceptive in any other respect.

RULE 7. Imitation of Trade-marks, Trade Names, Etc.

The imitation or simulation of the trade-marks, trade names, brands, or labels of competitors, with the capacity and tendency or effect of misleading or deceiving the purchasing or consuming public, is an unfair trade practice.

RULE 8. Use of Slack-Filled or Short-Weight Containers.

It is an unfair trade practice to sell, advertise, describe, or otherwise represent, canned sardines or canned sardine products packed in slack-filled or short-weight containers, or packed in odd-sized containers simulating in size or shape standard sized or shaped containers which are known to the public as standard containers of definite capacity, with the tendency or effect of misleading or deceiving the purchasing or consuming public as to the contents of such containers or the amount of sardines or sardine products contained therein; or which are packed in containers so made, formed, or filled as to be otherwise misleading.

RULE 9. Defamation of Competitors or Disparagement of Their Products.

The defamation of competitors by falsely imputing to them dishonorable conduct, inability to perform contracts, questionable credit standing, or by other false representations, or the false disparagement of the grade, quality, or manufacture of the products of competitors, or of their business methods, selling prices, values, credit terms, policies, or services, is an unfair trade practice.

RULE 10. Substituting Inferior Products for Those Ordered.

The practice of using or substituting any product of the industry inferior in grade or quality to that specified by the purchaser, without the consent of said purchaser to such use or substitution, or with the capacity and tendency or effect of otherwise misleading or deceiving the purchasing or consuming public, is an unfair trade practice.

RULE 11. Misuse of Word "Free."

The use of the word "free," or the equivalent thereof, where not properly or fairly qualified when the article is in fact not free, with the capacity or tendency to mislead or deceive the purchasing or consuming public, is an unfair trade practice.

RULE 12. Fictitious Prices.

Offering sardines or sardine products for sale at prices purported to be reduced from what are in fact fictitious prices, or offering such products for sale at a purported reduction in price when such purported reduction is in fact fictitious, with the capacity and tendency or effect of misleading or deceiving the purchasing or consuming public, is an unfair trade practice.

RULE 13. False Invoicing.

Withholding from or inserting in an invoice, billing, or statement any material information by reason of which omission or insertion a false record is made, wholly or in part, of the transaction which such invoice or billing or statement purports to represent, with the effect of thereby misleading or deceiving the purchasing or consuming public, is an unfair trade practice.

RULE 14. Inducing Breach of Contract.

Inducing or attempting to induce the breach of existing lawful contracts between competitors and their customers or their suppliers by any false or deceptive means whatsoever, or interfering with or obstructing the performance of any such contractual duties or services by any such means, with the purpose and effect of unduly hampering, injuring, or prejudicing competitors in their businesses, is an unfair trade practice.

RULE 15. Commercial Bribery.

It is an unfair trade practice for a member of the industry, directly or indirectly, to give, or offer to give, or permit or cause to be given, money or anything of value to agents, employees, or representatives of customers or prospective customers, or to agents, employees, or representatives of competitors' customers or prospective customers, without the knowledge of their employers or principals, as an inducement to influence their employers or principals to purchase or contract to purchase products manufactured or sold by such industry member or the maker of such gift or offer, or to influence such employers or principals to refrain from dealing in the products of competitors or from dealing or contracting to deal with competitors.

RULE 16. Enticing Away Employees of Competitors.

Wilfully enticing away the employees of competitors with the purpose and effect of unduly hampering, injuring, or prejudicing competitors in their businesses is an unfair trade practice.

RULE 17. Unfair Threats of Infringement Suits.

The circulation of threats of suit for infringement of patents or trade-marks among customers or prospective customers of competitors, not made in good faith but for the purpose or with the effect of harass-

ing or intimidating such customers or prospective customers, or of unduly hampering, injuring, or prejudicing competitors in their businesses, is an unfair trade practice.

RULE 18. Consignment Distribution.

It is an unfair trade practice for any member of the industry to use the practice of shipping goods on consignment or pretended consignment for the purpose and with the effect of artificially clogging trade outlets and unduly restricting competitors' use of said trade outlets in getting their goods to consumers through regular channels of distribution, or with such purpose to entirely close said trade outlets to such competitors so as to substantially lessen competition or tend to create a monopoly or to unreasonably restrain trade; *provided, however*, that nothing herein shall be construed or used as restricting or preventing consignment shipping or marketing of commodities in good faith and without artificial interference with competitors' use of the usual channels of distribution in such manner as thereby to suppress competition or restrain trade.

RULE 19. Selling Below Cost.

The practice of selling industry products below the seller's cost, when pursued with wrongful intent of thereby injuring a competitor and where the effect of such practice is to unreasonably restrain trade, tend to create a monopoly, or substantially lessen competition, is an unfair trade practice.

This rule is not to be construed as prohibiting all sales below cost, but only such selling below the seller's cost as is resorted to and pursued as a monopolistic practice with the wrongful intent referred to and coupled with the effect of unreasonably restraining trade, tending to create a monopoly, or substantially lessening competition. Sales below cost by a competitor not in a sufficiently strong competitive position to produce, and not actually producing, the monopolistic or restraining effect mentioned, do not fall within the inhibitions of this rule.

The costs referred to in the rule are actual costs of the respective seller and not some other figure or average costs in the industry determined by an industry cost survey or otherwise.

RULE 20.

(a) *Prohibited Discriminatory Prices, or Rebates, Refunds, Discounts, Credits, Etc., Which Effect Unlawful Price Discrimination.*—It is an unfair trade practice for any member of the industry engaged in commerce,¹ in the course of such commerce, to grant or allow, secretly or openly, directly or indirectly, any rebate, refund, discount, or credit, or the granting of free goods, or other form of price differential, where such rebate, refund, discount, or credit, or the granting of free

¹ See footnote, p. 460.
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goods, or other form of price differential, effects a discrimination in price between different purchasers of goods of like grade and quality, where either or any of the purchases involved therein are in commerce,¹ and where the effect thereof may be substantially to lessen competition or tend to create a monopoly in any line of commerce,¹ or to injure, destroy, or prevent competition with any person who either grants or knowingly receives the benefit of such discrimination, or with customers of either of them: *Provided, however*—

(1) That the goods involved in any such transaction are sold for use, consumption, or resale within any place under the jurisdiction of the United States;

(2) That nothing herein contained shall prevent differentials which make only due allowance for differences in the cost of manufacture, sale, or delivery resulting from the differing methods or quantities in which such commodities are to such purchasers sold or delivered;

(3) That nothing herein contained shall prevent persons engaged in selling goods, wares, or merchandise in commerce¹ from selecting their own customers in bona fide transactions and not in restraint of trade;

(4) That nothing herein contained shall prevent price changes from time to time where made in response to changing conditions affecting either (a) the market for the goods concerned, or (b) the marketability of the goods, such as, but not limited to, actual or imminent deterioration of perishable goods, obsolescence of seasonal goods, distress sales under court process, or sales in good faith in discontinuance of business in the goods concerned.

(b) *Prohibited Brokerage and Commissions.*—It is an unfair trade practice for any member of the industry engaged in commerce,¹ in the course of such commerce, to pay or grant, or to receive or accept, anything of value as a commission, brokerage, or other compensation, or any allowance or discount in lieu thereof, except for services rendered in connection with the sale or purchase of goods, wares, or merchandise, either to the other party to such transaction or to an agent, representative, or other intermediary therein where such intermediary is acting in fact for or in behalf, or is subject to the direct or indirect control, of any party to such transaction other than the person by whom such compensation is so granted or paid.

(c) *Prohibited Advertising or Promotional Allowances, Etc.*—It is an unfair trade practice for any member of the industry engaged in commerce¹ to pay or contract for the payment of advertising or promotional allowances or any other thing of value to or for the benefit

¹ See footnote, p. 460.

of a customer of such member in the course of such commerce as compensation or in consideration for any services or facilities furnished by or through such customer in connection with the processing, handling, sale, or offering for sale of any products or commodities manufactured, sold, or offered for sale by such member, unless such payment or consideration is available on proportionally equal terms to all other customers competing in the distribution of such products or commodities.

(d) *Prohibited Discriminatory Services or Facilities.*—It is an unfair trade practice for any member of the industry engaged in commerce¹ to discriminate in favor of one purchaser against another purchaser or purchasers of a commodity bought for resale, with or without processing, by contracting to furnish or furnishing, or by contributing to the furnishing of, any services or facilities connected with the processing, handling, sale, or offering for sale of such commodity so purchased upon terms not accorded to all purchasers on proportionally equal terms.

(e) *Inducing or Receiving an Illegal Discrimination in Price.*—It is an unfair trade practice for any member of the industry engaged in commerce,¹ in the course of such commerce, knowingly to induce or receive a discrimination in price which is prohibited by the foregoing provisions of this Rule 20.

(f) *Purchases by Schools, Colleges, Universities, Public Libraries, Churches, Hospitals, and Charitable Institutions Not Operated for Profit.*—The foregoing provisions of this Rule 20 relate to practices within the purview of the Robinson-Patman Antidiscrimination Act, which Act and the application thereunder of this Rule 20 are subject to the limitations expressed in the amendment to such Robinson-Patman Antidiscrimination Act, which amendment was approved May 26, 1938, and reads as follows:

“Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That nothing in the Act approved June 19, 1936 (Public, Numbered 692, Seventy-fourth Congress, second session), known as the Robinson-Patman Antidiscrimination Act, shall apply to purchases of their supplies for their own use by schools, colleges, universities, public libraries, churches, hospitals, and charitable institutions not operated for profit.” (52 Stat. 446; Supp. 4 U. S. C. Title 15, Sec. 13c.)

RULE 21. *Aiding or Abetting Use of Unfair Trade Practices.*

It is an unfair trade practice for any person, firm, or corporation to aid, abet, coerce, or induce another, directly or indirectly, to use or promote the use of any unfair trade practice specified in these rules.

¹ See footnote, p. 460.

GROUP II***RULE A. Cost Records.**

It is the judgment of the industry that each member should independently keep proper and accurate records for determining his costs.

RULE B. Repudiation or Cancellation of Contracts.

Lawful contracts are business obligations which should be performed in letter and in spirit. The repudiation or cancellation of contracts by sellers on a rising market or by buyers on a declining market is condemned by the industry.

A Committee on Trade Practices is hereby created by the industry to cooperate with the Federal Trade Commission and to perform such acts as may be legal and proper to put these rules into effect.

Promulgated by the Federal Trade Commission March 5, 1940.

* See page VIII for headnote applicable to Group II Rules.

TRADE PRACTICE RULES**FOR THE****UMBRELLA INDUSTRY**

PROMULGATED MARCH 9, 1940

STATEMENT BY THE COMMISSION

Trade practice rules for the Umbrella Industry, as hereinafter set forth, are promulgated by the Federal Trade Commission under its trade practice conference procedure.

The rules relate to the sale and distribution of the various kinds of umbrellas and parasols, and the accessories or parts therefor, by manufacturers, jobbers, distributors, importers, dealers, or others engaged in the merchandising of such products. As promulgated, the provisions are directed to the elimination and prevention of misrepresentation, deceptive concealment, and various other unfair trade practices, and are issued in the interest of protecting industry, trade, and the public from the harmful effects of such unfair methods or practices.

On the basis of published statistics, the total annual volume of business by the manufacturers appears to be around \$12,000,000.

The proceeding for the establishment of trade practice rules was instituted upon application of the industry. In the course thereof a general trade practice conference was held in New York City under the auspices of the Commission. Subsequently, a draft of proposed rules for the industry was made available upon public notice issued by the Commission to all interested or affected parties, whereby they were afforded opportunity to present their views to the Commission, including such pertinent information, suggestions, or objections as they desired to submit, and to be heard in the premises. Accordingly, public hearing pursuant to such notice was held in Washington, D. C., and all matters presented at the hearing, or otherwise submitted, were duly received and considered.

Thereafter, and upon consideration of the entire matter, final action was taken by the Commission whereby it approved and received, respectively, the rules appearing herein under Group I and Group II.

THE RULES**GROUP I*****RULE 1. Misrepresentation of Industry Products.**

It is an unfair trade practice to make or publish, or cause to be

* See page VIII for headnote applicable to Group I Rules.

made or published, directly or indirectly, any false, misleading, or deceptive statement or representation, by way of advertisement or otherwise, concerning the grade, quality, weight, character, durability, fastness of color, finish, size, material, fiber or other content, origin, construction, treatment, preparation, manufacture, or distribution of any products of the industry or concerning any component of such products, or in any other material respect.

RULE 2. Misbranding.

The false or deceptive marking or branding of umbrellas with any word, phrase, name, trade-mark, label, picture, design, device, or other representation with respect to the grade, quality, weight, character, durability, fastness of color, finish, size, material, fiber or other content, origin, construction, treatment, preparation, manufacture, or distribution of any such products of the industry or concerning any component of such products, or in any other material respect, is an unfair trade practice.

RULE 3. False Invoicing.

Withholding from or inserting in invoices any statements or information by reason of which omission or insertion a false record is made; wholly or in part, of the transactions represented on the face of such invoices, with the effect of thereby misleading or deceiving the purchasing or consuming public, is an unfair trade practice.

RULE 4. Misrepresentation of Rebuilt or Secondhand Umbrellas.

(a) It is an unfair trade practice for any member of the industry to sell, offer for sale, advertise, or otherwise represent any umbrella, or any part thereof, as being new when such is not true in fact.

(b) In the marketing of rebuilt or secondhand umbrellas or umbrellas containing rebuilt or secondhand parts, it is an unfair trade practice to fail or refuse to make full and nondeceptive disclosure, by tag or label attached to the product, of the fact that such umbrellas or parts are not new but are used, rebuilt, or secondhand as the case may be, such failure or refusal to make disclosure having the capacity and tendency or effect of misleading or deceiving the purchasing or consuming public.

RULE 5. Misrepresentation as to Character of Business.

It is an unfair trade practice for any person, firm, or corporation to represent, directly or indirectly, that he or it is an umbrella manufacturer or that he or it owns or controls a factory engaged in the manufacture of umbrellas, when such is not the fact, or in any other manner to misrepresent the character, extent, or type of his or its business.

RULE 6. Inducing Breach of Contract.

Inducing or attempting to induce the breach of existing lawful contracts between competitors and their customers or their suppliers by any false or deceptive means whatsoever, or interfering with or obstructing the performance of any such contractual duties or services by any such means, with the purpose and effect of unduly hampering, injuring, or prejudicing competitors in their businesses, is an unfair trade practice.

RULE 7. Substitution of Products.

The practice of shipping or delivering products which do not conform to samples submitted, to specifications upon which the sale is consummated, or to representations made prior to securing the order, without the consent of the purchasers to such substitutions, or with the capacity and tendency or effect of misleading or deceiving the purchasing or consuming public, is an unfair trade practice.

RULE 8. Defamation of Competitors or Disparagement of Their Products.

The defamation of competitors by falsely imputing to them dishonorable conduct, inability to perform contracts, questionable credit standing, or by other false representations, or the false disparagement of the grade, quality, or manufacture of the products of competitors, or of their business methods, selling prices, values, credit terms, policies, or services, is an unfair trade practice.

RULE 9. Commercial Bribery.

It is an unfair trade practice for a member of the industry, directly or indirectly, to give, or offer to give, or permit or cause to be given, money or anything of value to agents, employees, or representatives of customers or prospective customers, or to agents, employees, or representatives of competitors' customers or prospective customers, without the knowledge of their employers or principals, as an inducement to influence their employers or principals to purchase or contract to purchase products manufactured or sold by such industry member or the maker of such gift or offer, or to influence such employers or principals to refrain from dealing in the products of competitors or from dealing or contracting to deal with competitors.

RULE 10. Enticing Away Employees of Competitors.

Wilfully enticing away the employees of competitors with the purpose and effect of unduly hampering, injuring, or prejudicing competitors in their businesses is an unfair trade practice.

RULE 11. Consignment Distribution.

It is an unfair trade practice for any member of the industry to use the practice of shipping goods on consignment or pretended consign-

ment for the purpose and with the effect of artificially clogging trade outlets and unduly restricting competitors' use of said trade outlets in getting their goods to consumers through regular channels of distribution, or with such purpose to entirely close said trade outlets to such competitors so as substantially to lessen competition or tend to create a monopoly or unreasonably to restrain trade; *provided, however*, that nothing herein shall be construed or used as restricting or preventing consignment shipping or marketing of commodities in good faith and without artificial interference with competitors' use of the usual channels of distribution in such manner as thereby to suppress competition or restrain trade.

RULE 12. *Fiber Identification of Covers.*

Identification and disclosure of fiber and other material content of the products of this industry shall be made in accordance with the applicable requirements of the Group (I) fiber identification rules approved and promulgated by the Commission, such as the Group (I) Rayon Rules promulgated October 26, 1937, relating to products containing rayon in whole or in part, and the Group (I) Silk Rules promulgated November 4, 1938, relating to products containing or purporting to contain silk in whole or in part, and such other provisions of laws and regulations on the subject as or when made applicable to the products of this industry.

RULE 13.

(a) *Prohibited Discriminatory Prices, or Rebates, Refunds, Discounts, Credits, Etc., Which Effect Unlawful Price Discrimination.*—

It is an unfair trade practice for any member of the industry engaged in commerce,¹ in the course of such commerce, to grant or allow, secretly or openly, directly or indirectly, any rebate, refund, discount, credit, or other form of price differential, where such rebate, refund, discount, credit, or other form of price differential, effects a discrimination in price between different purchasers of goods of like grade and quality, where either or any of the purchases involved therein are in commerce,¹ and where the effect thereof may be substantially to lessen competition or tend to create a monopoly in any line of commerce,¹ or to injure, destroy, or prevent competition with any person who either grants or knowingly receives the benefit of such discrimination, or with customers of either of them: *Provided, however*—

(1) That the goods involved in any such transaction are sold for use, consumption, or resale within any place under the jurisdiction of the United States;

(2) That nothing herein contained shall prevent differentials which make only due allowance for differences in the cost of manufacture, sale, or delivery resulting from the differing methods or

¹ See footnote, p. 460.

quantities in which such commodities are to such purchasers sold or delivered;

(3) That nothing herein contained shall prevent persons engaged in selling goods, wares, or merchandise in commerce¹ from selecting their own customers in bona fide transactions and not in restraint of trade;

(4) That nothing herein contained shall prevent price changes from time to time where made in response to changing conditions affecting either (a) the market for the goods concerned, or (b) the marketability of the goods, such as, but not limited to, actual or imminent deterioration of perishable goods, obsolescence of seasonal goods, distress sales under court process, or sales in good faith in discontinuance of business in the goods concerned.

(b) *Prohibited Brokerage and Commissions.*—It is an unfair trade practice for any member of the industry engaged in commerce,¹ in the course of such commerce, to pay or grant, or to receive or accept, anything of value as a commission, brokerage, or other compensation, or any allowance or discount in lieu thereof, except for services rendered in connection with the sale or purchase of goods, wares, or merchandise, either to the other party to such transaction or to an agent, representative, or other intermediary therein where such intermediary is acting in fact for or in behalf, or is subject to the direct or indirect control, of any party to such transaction other than the person by whom such compensation is so granted or paid.

(c) *Prohibited Advertising or Promotional Allowances, Etc.*—It is an unfair trade practice for any member of the industry engaged in commerce¹ to pay or contract for the payment of advertising or promotional allowances or any other thing of value to or for the benefit of a customer of such member in the course of such commerce as compensation or in consideration for any services or facilities furnished by or through such customer in connection with the processing, handling, sale, or offering for sale of any products or commodities manufactured, sold, or offered for sale by such member, unless such payment or consideration is available on proportionally equal terms to all other customers competing in the distribution of such products or commodities.

(d) *Prohibited Discriminatory Services or Facilities.*—It is an unfair trade practice for any member of the industry engaged in commerce¹ to discriminate in favor of one purchaser against another purchaser or purchasers of a commodity bought for resale, with or without processing, by contracting to furnish or furnishing, or by contributing to the furnishing of, any services or facilities connected with the processing, handling, sale, or offering for sale of such commodity so

¹ See footnote, p. 460.

purchased upon terms not accorded to all purchasers on proportionally equal terms.

(e) *Inducing or Receiving an Illegal Discrimination in Price.*—It is an unfair trade practice for any member of the industry engaged in commerce,¹ in the course of such commerce, knowingly to induce or receive a discrimination in price which is prohibited by the foregoing provisions of this Rule 13.

(f) *Purchases by Schools, Colleges, Universities, Public Libraries, Churches, Hospitals, and Charitable Institutions Not Operated for Profit.*—The foregoing provisions of this Rule 13 relate to practices within the purview of the Robinson-Patman Antidiscrimination Act, which Act and the application thereunder of this Rule 13 are subject to the limitations expressed in the amendment to such Robinson-Patman Antidiscrimination Act, which amendment was approved May 26, 1938, and reads as follows:

"Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That nothing in the Act approved June 19, 1936 (Public, Numbered 692, Seventy-fourth Congress, second session), known as the Robinson-Patman Antidiscrimination Act, shall apply to purchases of their supplies for their own use by schools, colleges, universities, public libraries, churches, hospitals, and charitable institutions not operated for profit." (52 Stat. 446; Supp. 4 U. S. C. Title 15, Sec. 13c.)

RULE 14. *Discriminatory Returns.*

It is an unfair trade practice for any member of the industry, engaged in commerce,¹ to discriminate in favor of one customer-purchaser against another customer-purchaser of umbrellas, bought from such member of the industry for resale, by contracting to furnish or furnishing in connection therewith, upon terms not accorded to all customer-purchasers on proportionally equal terms, the service or facility whereby such favored purchaser is accorded the privilege of returning umbrellas so purchased and receiving therefor credit or refund of purchase price; provided, however, nothing in any of the rules herein shall prohibit or be used to prevent the return of merchandise by purchaser, for credit or refund of purchase price, when and because such merchandise has not been properly labeled by the seller as to fiber content, or has been otherwise falsely or deceptively labeled or represented, or when and because such merchandise is defective in material, workmanship, or in any other respect contrary to warranty or purchase contract. (See also Rule B, Group II.)

¹ See footnote, p. 460.

RULE 15. *Aiding or Abetting Use of Unfair Trade Practices.*

It is an unfair trade practice for any person, firm, or corporation to aid, abet, coerce, or induce another, directly or indirectly, to use or promote the use of any unfair trade practice specified in these rules.

GROUP II*

RULE A. *Repudiation of Contracts.*

Lawful contracts are business obligations which should be performed in letter and in spirit. The repudiation of contracts by sellers on a rising market, or by buyers on a declining market, is condemned by the industry.

RULE B. *Return of Merchandise.*

The practice, by members of the industry, of selling merchandise and later permitting the purchaser to return it for credit or refund of purchase price, without just cause, creates waste and loss, increases the cost of doing business to the detriment of both the industry and the public, and is condemned by the industry, subject, however, to the requirements and limitations set forth in the provisions of Rule 14 of Group I, herein, and subject also to the general limitation that members of the industry shall not engage in any combination or conspiracy in restraint of trade or use any other illegal methods in the regulation, control, or prevention of the return of merchandise.

Promulgated by the Federal Trade Commission March 9, 1940.

* See page VIII for headnote applicable to Group II Rules.

TRADE PRACTICE RULES

FOR THE

FOLDING PAPER BOX INDUSTRY

PROMULGATED APRIL 5, 1940

STATEMENT BY THE COMMISSION

Trade practice rules for the Folding Paper Box Industry, as herein-after set forth, are promulgated by the Federal Trade Commission under its trade practice conference procedure. The rules relate to the various types and sizes of folding paper cartons, boxes, and containers which are the products of this industry, and to their sale and distribution by manufacturers, jobbers, distributors, dealers, or other marketers. As promulgated, the rules are directed to the elimination and prevention of unfair methods of competition and various other unfair trade practices, and are issued in the interest of protecting industry, trade, and the public from the harmful effects of such unfair methods or practices.

According to information furnished the Commission, the manufacturers' volume of business, annually, is estimated at \$100,000,000.

The proceeding for the establishment of trade practice rules was instituted upon application of members of the industry. In the course thereof, and pursuant to public notice issued by the Commission, proposed rules for the industry were made available and all interested or affected parties were afforded opportunity to present their views to the Commission, including such pertinent information, suggestions, or objections as they desired to submit, and to be heard in the premises. Accordingly, public hearing pursuant to such notice was held in Washington, D. C., February 6, 1940. Thereafter, and upon consideration of the entire matter, final action was taken by the Commission whereby it approved and received, respectively, the rules appearing herein under Group I, and Group II. These provisions replace former rules for the Paperboard Industry which had been promulgated in 1929, and which are no longer in effect.

THE RULES

GROUP I*

RULE 1. *Misrepresentation of Industry Products.*

It is an unfair trade practice to make or publish, or cause to be made or published, directly or indirectly, any false, misleading, or

* See page VIII for headnote applicable to Group I Rules.

deceptive statement or representation, by way of advertisement or otherwise, concerning the grade, quality, quantity, use, size, material, finish, strength, thickness, content, origin, preparation, manufacture, or distribution of any product of the industry, or in any other material respect.

RULE 2. *Misrepresentation as to Character of Business.*

(a) It is an unfair trade practice for any person, partnership, or corporation, by trade or corporate name or otherwise, to hold himself or itself out as being a manufacturer or producer of folding paper boxes or allied products when such is not true in fact.

(b) It is an unfair trade practice for any person, partnership, or corporation, in the conduct of business, to misrepresent in any manner the character, nature, or status of the business of such person, partnership, or corporation.

RULE 3. *Misrepresenting Products as Conforming to Standards.*

Falsely or deceptively representing, through advertising, stamping, branding, or otherwise, that any product of the industry conforms to a required or recognized standard of size, construction, weight, or quality, when such is not the fact, is an unfair trade practice.

RULE 4. *Misbranding.*

The false or deceptive marking or branding of products of the industry with respect to the grade, quality, quantity, use, size, material, finish, strength, thickness, content, origin, preparation, manufacture, or distribution of such products, or in any other material respect, is an unfair trade practice.

RULE 5. *Use of Deceptive Selling Methods.*

The sale or offering for sale of any product of the industry by any false or deceptive means or device which has the capacity and tendency or effect of misleading or deceiving the purchasing or consuming public as to the grade, quality, quantity, use, size, material, finish, strength, thickness, content, origin, preparation, manufacture, or distribution of any product of the industry, or in any other material respect, is an unfair trade practice.

RULE 6. *Substitution of Products.*

The practice of shipping or delivering products which do not conform to samples submitted, to specifications upon which the sale is consummated, or to representations made prior to securing the order, without the consent of the purchasers to such substitutions, or with the capacity and tendency or effect of misleading or deceiving the purchasing or consuming public, is an unfair trade practice.

RULE 7. False and Misleading Price Quotations, Etc.

The publishing or circulating by any member of the industry of false or misleading price quotations, price lists, terms or conditions of sale, with the capacity and tendency or effect of thereby misleading or deceiving the purchasing or consuming public, is an unfair trade practice.

RULE 8. Inducing Breach of Contract.

Inducing or attempting to induce the breach of existing lawful contracts between competitors and their customers or their suppliers by any false or deceptive means whatsoever, or interfering with or obstructing the performance of any such contractual duties or services by any such means, with the purpose and effect of unduly hampering, injuring, or prejudicing competitors in their businesses, is an unfair trade practice.

RULE 9. Defamation of Competitors or Disparagement of Their Products.

The defamation of competitors by falsely imputing to them dishonorable conduct, inability to perform contracts, questionable credit standing, or by other false representations, or the false disparagement of the grade, quality, or manufacture of the products of competitors, or of their business methods, selling prices, values, credit terms, policies, or services, is an unfair trade practice.

RULE 10. Enticing Away Employees of Competitors.

Wilfully enticing away the employees of competitors with the purpose and effect of unduly hampering, injuring, or prejudicing competitors in their businesses is an unfair trade practice.

RULE 11. Unfair Threats of Infringement Suits.

The circulation of threats of suit for infringement of patents or trade-marks among customers or prospective customers of competitors, not made in good faith but for the purpose or with the effect of harassing or intimidating such customers or prospective customers, or of unduly hampering, injuring, or prejudicing competitors in their businesses, is an unfair trade practice.

RULE 12. Commercial Bribery.

It is an unfair trade practice for a member of the industry, directly or indirectly, to give, or offer to give, or permit or cause to be given, money or anything of value to agents, employees, or representatives of customers or prospective customers, or to agents, employees, or representatives of competitors' customers or prospective customers, without the knowledge of their employers or principals, as an inducement to influence their employers or principals to purchase or contract to purchase products manufactured or sold by such industry member or the maker of such gift or offer, or to influence such employers or principals

to refrain from dealing in the products of competitors or from dealing or contracting to deal with competitors.

RULE 13. Procurement of Competitors' Confidential Information by Unfair Means and Wrongful Use Thereof.

It is an unfair trade practice for any member of the industry to obtain information concerning the business of a competitor by bribery of an employee or agent of such competitor, by false or misleading statements or representations, by the impersonation of one in authority, or by any other unfair means, and to use the information so obtained in such a manner as to injure such competitor in his business or to suppress competition or unreasonably restrain trade.

RULE 14. Imitation or Simulation of Trade-Marks, Trade Names, Etc.

The imitation or simulation of the trade-marks, trade names, brands, or labels of competitors, with the capacity and tendency or effect of misleading or deceiving the purchasing or consuming public, is an unfair trade practice.

RULE 15. Combination or Coercion to Fix Prices, Suppress Competition, or Restrain Trade.

It is an unfair trade practice for a member of the industry or any person, firm, partnership, corporation, or association—

(a) to use, directly or indirectly, any form of threat, intimidation, or coercion against any member of the industry to unlawfully fix, maintain, or enhance prices, suppress competition, or restrain trade; or

(b) to enter into or take part in, directly or indirectly, any agreement, understanding, combination, conspiracy, or concert of action with one or more members of the industry, or with one or more persons, firms, partnerships, corporations, or associations, to fix, maintain, or enhance prices, suppress competition, or restrain trade.

RULE 16.**(a) Prohibited Discriminatory Prices, or Rebates, Refunds, Discounts, Credits, Etc., Which Effect Unlawful Price Discrimination.—**

It is an unfair trade practice for any member of the industry engaged in commerce,¹ in the course of such commerce, to grant or allow, secretly or openly, directly or indirectly, any rebate, refund, discount, credit, or other form of price differential, where such rebate, refund, discount, credit, or other form of price differential, effects a discrimination in price between different purchasers of goods of like grade and quality, where either or any of the purchases involved therein are in commerce,¹ and where the effect thereof may be substantially to lessen competition or tend to create a monopoly in any line of commerce,¹ or to injure, destroy, or prevent competition with any person who either grants or

¹ See footnote, p. 460.

knowingly receives the benefit of such discrimination, or with customers of either of them: *Provided, however—*

(1) That the goods involved in any such transaction are sold for use, consumption, or resale within any place under the jurisdiction of the United States;

(2) That nothing herein contained shall prevent differentials which make only due allowance for differences in the cost of manufacture, sale, or delivery resulting from the differing methods or quantities in which such commodities are to such purchasers sold or delivered;

(3) That nothing herein contained shall prevent persons engaged in selling goods, wares, or merchandise in commerce¹ from selecting their own customers in bona fide transactions and not in restraint of trade;

(4) That nothing herein contained shall prevent price changes from time to time where made in response to changing conditions affecting either (a) the market for the goods concerned, or (b) the marketability of the goods, such as, but not limited to, actual or imminent deterioration of perishable goods, obsolescence of seasonal goods, distress sales under court process, or sales in good faith in discontinuance of business in the goods concerned.

(b) *Prohibited Brokerage and Commissions.*—It is an unfair trade practice for any member of the industry engaged in commerce,¹ in the course of such commerce, to pay or grant, or to receive or accept, anything of value as a commission, brokerage, or other compensation, or any allowance or discount in lieu thereof, except for services rendered in connection with the sale or purchase of goods, wares, or merchandise, either to the other party to such transaction or to an agent, representative, or other intermediary therein where such intermediary is acting in fact for or in behalf, or is subject to the direct or indirect control, of any party to such transaction other than the person by whom such compensation is so granted or paid.

(c) *Prohibited Advertising or Promotional Allowances, Etc.*—It is an unfair trade practice for any member of the industry engaged in commerce¹ to pay or contract for the payment of advertising or promotional allowances or any other thing of value to or for the benefit of a customer of such member in the course of such commerce as compensation or in consideration for any services or facilities furnished by or through such customer in connection with the processing, handling, sale, or offering for sale of any products or commodities manufactured, sold, or offered for sale by such member, unless such payment or consideration is available on proportionally equal terms to all other cus-

¹ See footnote, p. 460.

tomers competing in the distribution of such products or commodities.

(d) *Prohibited Discriminatory Services or Facilities.*—It is an unfair trade practice for any member of the industry engaged in commerce¹ to discriminate in favor of one purchaser against another purchaser or purchasers of a commodity bought for resale, with or without processing, by contracting to furnish or furnishing, or by contributing to the furnishing of, any services or facilities connected with the processing, handling, sale, or offering for sale of such commodity so purchased upon terms not accorded to all purchasers on proportionally equal terms.

(e) *Inducing or Receiving an Illegal Discrimination in Price.*—It is an unfair trade practice for any member of the industry engaged in commerce,¹ in the course of such commerce, knowingly to induce or receive a discrimination in price which is prohibited by the foregoing provisions of this Rule 16.

(f) *Purchases by Schools, Colleges, Universities, Public Libraries, Churches, Hospitals, and Charitable Institutions Not Operated for Profit.*—The foregoing provisions of this Rule 16 relate to practices within the purview of the Robinson-Patman Antidiscrimination Act, which Act and the application thereunder of this Rule 16 are subject to the limitations expressed in the amendment to such Robinson-Patman Antidiscrimination Act, which amendment was approved May 26, 1938, and reads as follows:

"Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That nothing in the Act approved June 19, 1936 (Public, Numbered 692, Seventy-fourth Congress, second session), known as the Robinson-Patman Antidiscrimination Act, shall apply to purchases of their supplies for their own use by schools, colleges, universities, public libraries, churches, hospitals, and charitable institutions not operated for profit." (52 Stat. 446; Supp. 4 U. S. C. Title 15, Sec. 13c.)

RULE 17. *False Invoicing.*

Withholding from or inserting in invoices any statement or information by reason of which omission or insertion a false record is made, wholly or in part, of the transactions represented on the face of such invoices, with the effect of thereby misleading or deceiving the purchasing or consuming public, is an unfair trade practice.

RULE 18. *Aiding or Abetting Use of Unfair Trade Practices.*

It is an unfair trade practice for any person, firm, or corporation to aid, abet, coerce, or induce another, directly or indirectly, to use or promote the use of any unfair trade practice specified in these rules.

¹ See footnote, p. 460.
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GROUP II*

RULE A. *Repudiation or Cancellation of Contracts.*

Lawful contracts are business obligations which should be performed in letter and in spirit. The repudiation or cancellation of contracts by sellers on a rising market or by buyers on a declining market is condemned by the industry.

RULE B. *Cost Records.*

It is the judgment of the industry that each member should independently keep proper and accurate records for determining his costs.

Promulgated by the Federal Trade Commission April 5, 1940.

* See page VIII for headnote applicable to Group II Rules.

TRADE PRACTICE RULES

FOR THE

UNIFORM INDUSTRY

PROMULGATED MAY 18, 1940

STATEMENT BY THE COMMISSION

Trade practice rules for the Uniform Industry, as hereinafter set forth, are promulgated by the Federal Trade Commission under its trade practice conference procedure.

The rules relate to the sale and distribution, by manufacturers, jobbers, distributors, dealers, or other marketers, of the numerous kinds of uniform apparel, which includes such wearing apparel as blouses, breeches, capes, coats, jackets, mackinaws, overcoats, reefers, shirts, trousers, vests, etc., worn as distinctive uniform or regulation dress, male or female, in official, public, private, fraternal, or social activity, or in any other types of service or organizational activity in which uniform or regulation dress is used. As promulgated, the rules are directed to the elimination and prevention of unfair methods of competition and various other unfair trade practices, and are issued in the interest of protecting industry, trade, and the public from the harmful effects of such unfair methods or practices.

According to information reported to the Commission, the manufacturers' aggregate volume of business, annually, is estimated at approximately \$23,000,000.

This proceeding was instituted upon application of members of the industry for the establishment of trade practice rules in revised form to take the place of the Uniform Industry rules published in 1934. In the course of the proceeding a draft of revised rules as proposed for the industry was made available upon public notice issued by the Commission to all interested or affected parties, whereby they were afforded opportunity to present their views, including such pertinent information, suggestions, or objections as they desired to submit, and to be heard in the premises. Accordingly, public hearing pursuant to such notice was held in Washington, D. C., on March 28, 1940, and all matters submitted in the proceeding were duly received and considered. Thereafter, and upon consideration of the entire matter, final action was taken by the Commission whereby it approved and received, respectively, the rules appearing herein under Group I and Group II.

The rules as herein promulgated supersede and replace the former rules which were issued for this industry on March 15, 1934, which former rules have now become void.

THE RULES

GROUP I*

RULE 1. *Misrepresentation of Industry Products.*

It is an unfair trade practice to make or publish, or cause to be made or published, directly or indirectly, any false, misleading, or deceptive statement or representation, by way of advertisement or otherwise, concerning the grade, quality, quantity, use, size, material, content, origin, shrinkage properties, colorfastness, washability, design, tailoring, production, manufacture, or distribution of any product of the industry or concerning any component of such product, or in any other material respect.

(NOTE.—Disclosure of material content shall be made in accordance with the requirements of the applicable fiber identification rules of the Commission.)

RULE 2. *Misbranding.*

The false or deceptive marking or branding of products of the industry with respect to the grade, quality, quantity, use, size, material, content, origin, shrinkage properties, colorfastness, washability, design, tailoring, production, manufacture, or distribution of such products, or concerning any component thereof, or in any other material respect, is an unfair trade practice.

(NOTE.—Disclosure of material content shall be made in accordance with the requirements of the applicable fiber identification rules of the Commission.)

RULE 3. *Misrepresentation as to Character of Business.*

It is an unfair trade practice for any person, firm, or corporation to hold himself or itself out as a uniform tailor, uniform manufacturer, or uniform wholesaler, when such is not the fact, or in any other manner to misrepresent the character, extent, or type of his or its business.

RULE 4. *Misrepresenting Uniforms as "Custom Made," "Made to Order," Etc.*

The sale or offering for sale, through advertising or otherwise, of uniforms as custom made, made to order, or by other representations implying or importing that a garment is to be or has been manufactured according to the measurements of an individual submitted with the order, when such is not the fact, is an unfair trade practice.

RULE 5. *Deceptive Numbering.*

It is an unfair trade practice for any member of the industry to disguise, by any special number, any standard or special fabric known to the trade by a given number, in such manner or under such cir-

*See page .. for headnote applicable to Group I Rules.

cumstances as to have the capacity and tendency or effect of misleading or deceiving the purchasing or consuming public into the erroneous belief that a superior fabric is being offered for sale when such is not the fact, or of deceiving the purchasing or consuming public in any other respect.

RULE 6. *Deception as to Used Garments.*

(a) It is an unfair trade practice for any member of the industry to sell, offer for sale, advertise, or otherwise represent any uniform, or any part thereof, as being new when such is not true in fact.

(b) In the marketing of used or secondhand uniforms or uniforms containing used or secondhand parts, it is an unfair trade practice to fail or refuse to make full and nondeceptive disclosure, by tag or label attached to the product, of the fact that such uniforms or parts thereof are not new but are used or secondhand, as the case may be, such failure or refusal to make disclosure having the capacity and tendency or effect of misleading or deceiving the purchasing or consuming public.

RULE 7. *Deceptive Use of Competitor's Plates, Cuts, or Illustrations.*

It is an unfair trade practice, in the sale and distribution of industry products, to adopt for one's own use, by photostatic, photographic, or other means of reproduction, the exclusively owned plates, cuts, or illustrations of a competitor contained in such competitor's catalogs, sales publications, measure books, folders, or blanks, with the capacity and tendency or effect of thereby misleading or deceiving the purchasing or consuming public into the erroneous belief that the products so sold and distributed are products of such competitor.

RULE 8. *Imitation of Trade-marks, Trade Names, Etc.*

The imitation or simulation of the trade-marks, trade names, brands, or labels of competitors, with the capacity and tendency or effect of misleading or deceiving the purchasing or consuming public, is an unfair trade practice.

RULE 9. *Substitution of Products.*

The practice of shipping or delivering products which do not conform to samples submitted, to specifications upon which the sale is consummated, or to representations made prior to securing the order, without the consent of the purchaser to such substitutions, or with the capacity and tendency or effect of misleading or deceiving the purchasing or consuming public, is an unfair trade practice.

RULE 10. *Fictitious Prices.*

Offering merchandise for sale at prices purported to be reduced from what are in fact fictitious prices, or offering merchandise for sale at a purported reduction in price when such purported reduction

is in fact fictitious, or is otherwise misleading or deceptive, is an unfair trade practice.

RULE 11. *Defamation of Competitors or Disparagement of Their Products.*

The defamation of competitors by falsely imputing to them dishonorable conduct, inability to perform contracts, questionable credit standing, or by other false representations, or the false disparagement of the grade, quality, or manufacture of the products of competitors, or of their business methods, selling prices, values, credit terms, policies, or services, is an unfair trade practice.

RULE 12. *Enticing Away Employees of Competitors.*

Wilfully enticing away the employees of competitors with the purpose and effect of unduly hampering, injuring, or prejudicing competitors in their businesses is an unfair trade practice.

RULE 13. *Commercial Bribery.*

It is an unfair trade practice for a member of the industry, directly or indirectly, to give, or offer to give, or permit or cause to be given, money or anything of value to agents, employees, or representatives of customers or prospective customers, or to agents, employees, or representatives of competitors' customers or prospective customers, without the knowledge of their employers or principals, as an inducement to influence their employers or principals to purchase or contract to purchase products manufactured or sold by such industry member or the maker of such gift or offer, or to influence such employers or principals to refrain from dealing in the products of competitors or from dealing or contracting to deal with competitors.

RULE 14. *Procurement of Competitors' Confidential Information by Unfair Means and Wrongful Use Thereof.*

It is an unfair trade practice for any member of the industry to obtain information concerning the business of a competitor by bribery of an employee or agent of such competitor, by false or misleading statements or representations, by the impersonation of one in authority, or by any other unfair means, and to use the information so obtained in such a manner as to injure said competitor in his business or to suppress competition or unreasonably restrain trade.

RULE 15. *Inducing Breach of Contract.*

Inducing or attempting to induce the breach of existing lawful contracts between competitors and their customers or their suppliers by any false or deceptive means whatsoever, or interfering with or obstructing the performance of any such contractual duties or services by any such means, with the purpose and effect of unduly hampering, injuring, or prejudicing competitors in their businesses, is an unfair trade practice.

RULE 16. *Selling Below Cost.*

The practice of selling industry products below the seller's cost with the intent and with the effect of injuring a competitor and where the effect may be substantially to lessen competition or tend to create a monopoly or unreasonably restrain trade is an unfair trade practice; all elements recognized by good accounting practice as proper elements of such cost shall be included in determining cost under this rule. The costs, however, which are referred to in the rule, are actual costs of the respective seller and not some other figure or average costs in the industry determined by an industry cost survey or otherwise.

RULE 17. *Unfair Bidding Methods.*

It is an unfair trade practice for a uniform manufacturer to induce a contractee or purchaser to use and apply in specifications a number to denote a style of fabric upon which bidding is to be let publicly, which number is not generally used and known to other members of the industry to denote a known fabric, or to withhold other information necessary to enable competitors to intelligently bid on the contract, where the effect may be to substantially lessen competition or tend to create a monopoly or unreasonably restrain trade.

RULE 18.

(a) *Prohibited Discriminatory Prices, or Rebates, Refunds, Discounts, Credits, Etc., Which Effect Unlawful Price Discrimination.*

It is an unfair trade practice for any member of the industry engaged in commerce,¹ in the course of such commerce, to grant or allow, secretly or openly, directly or indirectly, any rebate, refund, discount, credit, or other form of price differential, where such rebate, refund, discount, credit, or other form of price differential effects a discrimination in price between different purchasers of goods of like grade and quality, where either or any of the purchases involved therein are in commerce,¹ and where the effect thereof may be substantially to lessen competition or tend to create a monopoly in any line of commerce,¹ or to injure, destroy, or prevent competition with any person who either grants or knowingly receives the benefit of such discrimination, or with customers of either of them: *Provided, however—*

(1) That the goods involved in any such transaction are sold for use, consumption, or resale within any place under the jurisdiction of the United States;

(2) That nothing herein contained shall prevent differentials which make only due allowance for differences in the cost of manufacture, sale, or delivery resulting from the differing methods or quantities in which such commodities are to such purchasers sold or delivered;

(3) That nothing herein contained shall prevent persons en-

¹ See footnote, p. 460.

gaged in selling goods, wares, or merchandise in commerce¹ from selecting their own customers in bona fide transactions and not in restraint of trade;

(4) That nothing herein contained shall prevent price changes from time to time where made in response to changing conditions affecting either (a) the market for the goods concerned, or (b) the marketability of the goods, such as, but not limited to, actual or imminent deterioration of perishable goods, obsolescence of seasonal goods, distress sales under court process, or sales in good faith in discontinuance of business in the goods concerned.

(b) *Prohibited Brokerage and Commissions.*—It is an unfair trade practice for any member of the industry engaged in commerce,¹ in the course of such commerce, to pay or grant, or to receive or accept, anything of value as a commission, brokerage, or other compensation, or any allowance or discount in lieu thereof, except for services rendered in connection with the sale or purchase of goods, wares, or merchandise, either to the other party to such transaction or to an agent, representative, or other intermediary therein where such intermediary is acting in fact for or in behalf, or is subject to the direct or indirect control, of any party to such transaction other than the person by whom such compensation is so granted or paid.

(c) *Prohibited Advertising or Promotional Allowances, Etc.*—It is an unfair trade practice for any member of the industry engaged in commerce¹ to pay or contract for the payment of advertising or promotional allowances or any other thing of value to or for the benefit of a customer of such member in the course of such commerce as compensation or in consideration for any services or facilities furnished by or through such customer in connection with the processing, handling, sale, or offering for sale of any products or commodities manufactured, sold, or offered for sale by such member, unless such payment or consideration is available on proportionally equal terms to all other customers competing in the distribution of such products or commodities.

(d) *Prohibited Discriminatory Services or Facilities.*—It is an unfair trade practice for any member of the industry engaged in commerce¹ to discriminate in favor of one purchaser against another purchaser or purchasers of a commodity bought for resale, with or without processing, by contracting to furnish or furnishing, or by contributing to the furnishing of, any services or facilities connected with the processing, handling, sale, or offering for sale of such commodity so purchased upon terms not accorded to all purchasers on proportionally equal terms.

(e) *Inducing or Receiving an Illegal Discrimination in Price.*—It is an unfair trade practice for any member of the industry engaged in

¹ See footnote, p. 460.

commerce,¹ in the course of such commerce, knowingly to induce or receive a discrimination in price which is prohibited by the foregoing provisions of this Rule 18.

(f) *Purchases by Schools, Colleges, Universities, Public Libraries, Churches, Hospitals, and Charitable Institutions Not Operated for Profit.*—The foregoing provisions of this Rule 18 relate to practices within the purview of the Robinson-Patman Antidiscrimination Act, which Act and the application thereunder of this Rule 18 are subject to the limitations expressed in the amendment to such Robinson-Patman Antidiscrimination Act, which amendment was approved May 26, 1938, and reads as follows:

"Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That nothing in the Act approved June 19, 1936 (Public, Numbered 692, Seventy-fourth Congress, second session), known as the Robinson-Patman Antidiscrimination Act, shall apply to purchases of their supplies for their own use by schools, colleges, universities, public libraries, churches, hospitals, and charitable institutions not operated for profit." (52 Stat. 446; Supp. 4 U. S. C. Title 15, Sec. 13c.)

RULE 19. *Aiding or Abetting Use of Unfair Trade Practices.*

It is an unfair trade practice for any person, firm, or corporation to aid, abet, coerce, or induce another, directly or indirectly, to use or promote the use of any unfair trade practice specified in these rules.

GROUP II*

RULE A.

Lawful contracts are business obligations which should be performed in letter and in spirit. The repudiation of contracts by sellers on a rising market or by buyers on a declining market is condemned by the industry.

RULE B.

The industry condemns fake or fictitious bids made for the purpose of deceiving competitors and securing undue advantage. If plans and specifications are changed and new bids called for after the original bids have been submitted and opened, the same fairness should obtain as with the original bid.

RULE C.

Where the buyer furnishes to one bidder, directly or indirectly, pertinent information concerning the bidding, or an interpretation of some feature of the specifications, giving this bidder an undue

¹ See footnote, p. 460.

* See page VIII for headnote applicable to Group II Rules.

advantage over his competitors who have not received the same information, the industry recommends that such information or interpretation be made available to all other bidders by the buyer or his representative.

RULE D.

The industry approves the practice of handling business disputes between members of the industry and their customers in a fair and reasonable manner, coupled with a spirit of moderation and good will, and every effort should be made by the disputants themselves to compose their differences. If unable to do so they should, if possible, submit these disputes to arbitration.

Promulgated by the Federal Trade Commission May 18, 1940.

TRADE PRACTICE RULES

FOR THE

RIPE OLIVE INDUSTRY

PROMULGATED JUNE 14, 1940

STATEMENT BY THE COMMISSION

Trade practice rules for the Ripe Olive Industry, as hereinafter set forth, are promulgated by the Federal Trade Commission under its trade practice conference procedure.

The rules relate to the sale and distribution in commerce of ripe olives by the packers thereof, and by jobbers, distributors, importers, or other marketers. As promulgated, the rules are directed to the elimination and prevention of misrepresentation, deceptive concealment, and various other unfair trade practices, and are issued in the interest of protecting industry, trade, and the public from the harmful effects of such unfair methods or practices.

Ripe olives are produced extensively in the State of California and contiguous area. According to information furnished the Commission, the industry's pack of the ripe fruit, exclusive of chopped olives, approximated 750,000 cases for the season 1937-1938.

The proceeding for the establishment of trade practice rules was instituted upon application of the industry. In the course thereof a general trade practice conference, under the auspices of the Commission, was held in San Francisco, California. Subsequently, a draft of proposed rules for the industry was made available upon public notice issued by the Commission to all interested or affected parties, whereby they were afforded opportunity to present their views to the Commission, including such pertinent information, suggestions, or objections as they desired to submit, and to be heard in the premises. Accordingly, public hearing pursuant to such notice was held in Washington, D. C., on January 30, 1940, and all matters there presented, or otherwise submitted, were duly received and considered.

Thereafter, and upon consideration of the entire matter, final action was taken by the Commission whereby it approved and received, respectively, the rules appearing under Group I and Group II.

These rules do not in any respect supplant, or relieve anyone of the necessity of complying with, the requirements of the pure food laws or other applicable provisions of law. They are established under statutes administered by the Federal Trade Commission for the purpose of more effectively stamping out unfair trade practices in the interest of the public, and to assist in general law enforcement to this

end. They are not to be used, directly or indirectly, as part of or in connection with any combination or agreement to fix prices, or for the suppression of competition, or otherwise to unreasonably restrain trade.

THE RULES

GROUP I*

RULE 1. *Definition.*

For the purpose of these rules and in their application the following definition shall apply:

Olives Unfit for Canning or Packing.—Olives shall be deemed unfit for canning or packing which are unclean, immature, moldy, overripe, infested with fungus, rot, or other defects, or which are in any manner unwholesome.

RULE 2. *Olives Unfit for Canning or Packing.*

It is an unfair trade practice to sell, offer for sale, advertise, describe, or otherwise represent, directly or indirectly, olives of unfit quality for canning or packing as described in Rule 1, *Definition*, as and for olives of canning or packing quality.

RULE 3. *Misrepresentation of Industry Products.*

The practice of selling, advertising, describing, or otherwise representing, ripe olives, or ripe olive products, in a manner which is calculated to mislead or deceive, or has the capacity and tendency or effect of misleading or deceiving, the purchasing or consuming public with respect to the character, nature, content, brand, grade, variety, quality, quantity, origin, substance, material, size, preparation, packing, distribution, or manufacture of such products, or in any other material respect, is an unfair trade practice.

RULE 4. *Deceptive Depictions.*

It is an unfair trade practice to use in relation to industry products any photograph, cut, engraving, insignia, vignette, design, illustration, or pictorial or other depiction or device (in catalogs, sales literature, advertisements, or other representations) which has the capacity and tendency or effect of misleading or deceiving the purchasing or consuming public respecting the character, nature, content, brand, grade, variety, quality, quantity, origin, substance, material, size, preparation, packing, distribution, or manufacture of any such products of the industry; or which is false, misleading, or deceptive in any other respect.

RULE 5. *Deceptive Concealment.*

In the interest of protecting purchasers and preserving fair competi-

* See page VIII for headnote applicable to Group I Rules.

tion in the industry, full and nondeceptive disclosure should be made by members of the industry in their advertising, sales literature, and other selling representations of the quality, quantity, and size of the olives packed in cans or other opaque containers and offered for sale. Concealment of such information or the nondisclosure thereof, where practiced by the seller with the capacity and tendency or effect of thereby misleading or deceiving the purchasing or consuming public, is an unfair trade practice.

RULE 6. *Substitution of Products.*

The practice of shipping or delivering products which do not conform to samples submitted, to specifications upon which the sale is consummated, or to representations made prior to securing the order, without the consent of the purchasers to such substitutions, or with the capacity and tendency or effect of misleading or deceiving the purchasing or consuming public, is an unfair trade practice.

RULE 7. *Defamation of Competitors or Disparagement of Their Products.*

The defamation of competitors by falsely imputing to them dishonorable conduct, inability to perform contracts, questionable credit standing, or by other false representations, or the false disparagement of the grade, quality, or manufacture of the products of competitors, or of their business methods, selling prices, values, credit terms, policies, or services, is an unfair trade practice.

RULE 8. *Commercial Bribery.*

It is an unfair trade practice for a member of the industry, directly or indirectly, to give, or offer to give, or permit or cause to be given, money or anything of value to agents, employees, or representatives of customers or prospective customers, or to agents, employees, or representatives of competitors' customers or prospective customers, without the knowledge of their employers or principals, as an inducement to influence their employers or principals to purchase or contract to purchase products manufactured or sold by such industry member or the maker of such gift or offer, or to influence such employers or principals to refrain from dealing in the products of competitors or from dealing or contracting to deal with competitors.

RULE 9. *Inducing Breach of Contract.*

Inducing or attempting to induce the breach of existing lawful contracts between competitors and their customers or their suppliers by any false or deceptive means whatsoever, or interfering with or obstructing the performance of any such contractual duties or services by any such means, with the purpose and effect of unduly hampering, injuring, or prejudicing competitors in their businesses, is an unfair trade practice.

RULE 10. Enticing Away Employees of Competitors.

Wilfully enticing away the employees of competitors with the purpose and effect of unduly hampering, injuring, or prejudicing competitors in their businesses is an unfair trade practice.

RULE 11.**(a) Prohibited Discriminatory Prices, or Rebates, Refunds, Discounts, Credits, Etc., Which Effect Unlawful Price Discrimination.—**

It is an unfair trade practice for any member of the industry engaged in commerce,¹ in the course of such commerce, to grant or allow, secretly or openly, directly or indirectly, any rebate, refund, discount, credit, or other form of price differential, where such rebate, refund, discount, credit, or other form of price differential, effects a discrimination in price between different purchasers of goods of like grade and quality, where either or any of the purchases involved therein are in commerce,¹ and where the effect thereof may be substantially to lessen competition or tend to create a monopoly in any line of commerce,¹ or to injure, destroy, or prevent competition with any person who either grants or knowingly receives the benefit of such discrimination, or with customers of either of them: *Provided, however—*

(1) That the goods involved in any such transaction are sold for use, consumption, or resale within any place under the jurisdiction of the United States;

(2) That nothing herein contained shall prevent differentials which make only due allowance for differences in the cost of manufacture, sale, or delivery resulting from the differing methods or quantities in which such commodities are to such purchasers sold or delivered;

(3) That nothing herein contained shall prevent persons engaged in selling goods, wares, or merchandise in commerce¹ from selecting their own customers in bona fide transactions and not in restraint of trade;

(4) That nothing herein contained shall prevent price changes from time to time where made in response to changing conditions affecting either (a) the market for the goods concerned, or (b) the marketability of the goods, such as, but not limited to, actual or imminent deterioration of perishable goods, obsolescence of seasonal goods, distress sales under court process, or sales in good faith in discontinuance of business in the goods concerned.

(b) Prohibited Brokerage and Commissions.—It is an unfair trade practice for any member of the industry engaged in commerce,¹ in the course of such commerce, to pay or grant, or to receive or accept, anything of value as a commission, brokerage, or other compensation, or

¹ See footnote, p. 460.

any allowance or discount in lieu thereof, except for services rendered in connection with the sale or purchase of goods, wares, or merchandise, either to the other party to such transaction or to an agent, representative, or other intermediary therein where such intermediary is acting in fact for or in behalf, or is subject to the direct or indirect control, of any party to such transaction other than the person by whom such compensation is so granted or paid.

(c) Prohibited Advertising or Promotional Allowances, Etc.—It is an unfair trade practice for any member of the industry engaged in commerce¹ to pay or contract for the payment of advertising or promotional allowances or any other thing of value to or for the benefit of a customer of such member in the course of such commerce as compensation or in consideration for any services or facilities furnished by or through such customer in connection with the processing, handling, sale, or offering for sale of any products or commodities manufactured, sold, or offered for sale by such member, unless such payment or consideration is available on proportionally equal terms to all other customers competing in the distribution of such products or commodities.

(d) Prohibited Discriminatory Services or Facilities.—It is an unfair trade practice for any member of the industry engaged in commerce¹ to discriminate in favor of one purchaser against another purchaser or purchasers of a commodity bought for resale, with or without processing, by contracting to furnish or furnishing, or by contributing to the furnishing of, any services or facilities connected with the processing, handling, sale, or offering for sale of such commodity so purchased upon terms not accorded to all purchasers on proportionally equal terms.

(e) Inducing or Receiving an Illegal Discrimination in Price.—It is an unfair trade practice for any member of the industry engaged in commerce,¹ in the course of such commerce, knowingly to induce or receive a discrimination in price which is prohibited by the foregoing provisions of this Rule 11.

(f) Purchases by Schools, Colleges, Universities, Public Libraries, Churches, Hospitals, and Charitable Institutions Not Operated for Profit.—The foregoing provisions of this Rule 11 relate to practices within the purview of the Robinson-Patman Antidiscrimination Act, which Act and the application thereunder of this Rule 11 are subject to the limitations expressed in the amendment to such Robinson-Patman Antidiscrimination Act, which amendment was approved May 26, 1938, and reads as follows:

“Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That nothing in the Act approved June 19, 1936 (Public, Numbered 692,

¹ See footnote, p. 460.

Seventy-fourth Congress, second session), known as the Robinson-Patman Antidiscrimination Act, shall apply to purchases of their supplies for their own use by schools, colleges, universities, public libraries, churches, hospitals, and charitable institutions not operated for profit." (52 Stat. 446; Supp. 4 U. S. C. Title 15, Sec. 13c.)

RULE 12. Aiding or Abetting Use of Unfair Trade Practices.

It is an unfair trade practice for any person, firm, or corporation to aid, abet, coerce, or induce another, directly or indirectly, to use or promote the use of any unfair trade practice specified in these rules.

GROUP II*

RULE A. Repudiation of Contracts.

Lawful contracts are business obligations which should be performed in letter and in spirit. The repudiation of contracts by sellers on a rising market or by buyers on a declining market is condemned by the industry.

RULE B. Fake or Fictitious Bids.

The industry condemns fake or fictitious bids made for the purpose of deceiving competitors and securing undue advantage. If plans and specifications are changed and new bids called for after the original bids have been submitted and opened, the same fairness should obtain as with the original bids.

Promulgated by the Federal Trade Commission June 14, 1940.

* See page VIII for headnote applicable to Group II Rules.

TRADE PRACTICE RULES

FOR THE

RESISTANCE WELDER MANUFACTURING INDUSTRY

PROMULGATED AUGUST 16, 1940

STATEMENT BY THE COMMISSION

Trade practice rules for the Resistance Welder Manufacturing Industry, as hereinafter set forth, are promulgated by the Federal Trade Commission under its trade practice conference procedure.

The rules are directed to the prevention of various unfair competitive methods or practices and the protection of industry, trade, and the public from their harmful effects. The provisions of the rules as promulgated apply to the sale and distribution, by manufacturers, distributors, or others, of resistance welding machines and of parts and equipment therefor. Such machines are used to weld metal parts by means of resistance effected through the application of high-powered electric current. This type of welding is extensively employed in steel mills, in the manufacture of automobiles and railway cars, and in the fabrication of metal products generally. According to information furnished the Commission, the sales volume of such machines and related parts or equipment is approximately \$6,000,000, annually.

The proceeding for the establishment of trade practice rules was instituted upon application of the industry. In the course thereof a trade practice conference, under the auspices of the Commission, was held in Chicago, Illinois. Subsequently, a draft of proposed rules for the industry was made available, upon public notice issued by the Commission, to all interested or affected parties, whereby they were afforded opportunity to present their views to the Commission, including such pertinent information, suggestions, or objections as they desired to submit, and to be heard in the premises. Accordingly, public hearing pursuant to such notice was held in Washington, D. C., on July 12, 1940. Thereafter, and upon consideration of the entire matter, final action was taken by the Commission whereby it approved and received, respectively, the rules appearing herein under Group I and Group II.

THE RULES

GROUP I*

RULE 1. Misrepresentation of Industry Products.

It is an unfair trade practice to make or publish, or cause to be made or published, directly or indirectly, any false, misleading, or deceptive

* See page VIII for headnote applicable to Group I Rules.
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statement or representation, by way of advertisement or otherwise, concerning the size, style, strength of union effected, circuit requirements, performance, equipment, character, durability, finish, material, origin, construction, manufacture, or distribution of any products of the industry or concerning any component of such products, or in any other material respect.

RULE 2. Misbranding.

It is an unfair trade practice to falsely or deceptively mark, brand, or label welding machines or other products of the industry with any word, phrase, name, mark, label, picture, design, device, or other representation with respect to the size, style, strength of union effected, circuit requirements, performance, equipment, character, durability, finish, material, origin, construction, manufacture, or distribution of any such products of the industry, or concerning any component of such products, or in any other material respect.

RULE 3. False Invoicing.

It is an unfair trade practice to withhold from or insert in invoices any statements or information by reason of which omission or insertion a false record is made, wholly or in part, of the transactions represented on the face of such invoices, with the effect of thereby misleading or deceiving purchasers or prospective purchasers.

RULE 4. Deception as to Rebuilt or Secondhand Products.

(a) It is an unfair trade practice for any member of the industry to sell, offer for sale, advertise, or otherwise represent any welding machine, part therefor, or other product of the industry, as being new when such is not true in fact.

(b) In the marketing of rebuilt or secondhand welding machines, welding machine parts, or welding machines containing rebuilt or secondhand parts, it is an unfair trade practice to fail or refuse to make full and nondeceptive disclosure, by tag or label attached to the product, of the fact that such welding machines or parts are not new but are used, rebuilt, or secondhand, as the case may be, such failure or refusal to disclose having the capacity and tendency or effect of misleading or deceiving purchasers or prospective purchasers.

RULE 5. Misrepresentation as to Character of Business.

It is an unfair trade practice for any person, firm, or corporation to represent, directly or indirectly, that he or it is a welding machine manufacturer, or that he or it owns or controls a factory engaged in the manufacture of welding machines, when such is not the fact, or in any other manner to misrepresent the character, extent, or type of his or its business.

RULE 6. Imitation of Trade-marks, Trade Names, Etc.

The imitation or simulation of the trade-marks, trade names, brands, or labels of competitors, with the capacity and tendency or effect of misleading or deceiving purchasers or prospective purchasers, is an unfair trade practice.

RULE 7. Inducing Breach of Contract.

It is an unfair trade practice to induce or attempt to induce the breach of existing lawful contracts between competitors and their customers, or their suppliers, by any false or deceptive means whatsoever, or to interfere with or obstruct the performance of any such contractual duties or services by any such means, with the purpose and effect of unduly hampering, injuring, or prejudicing competitors in their businesses.

RULE 8. Substitution of Products.

The practice of shipping or delivering products which do not conform to samples submitted, to specifications upon which the sale is consummated, or to representations made prior to securing the order, without the consent of the purchasers to such substitutions, or with the capacity and tendency or effect of misleading or deceiving purchasers or prospective purchasers, is an unfair trade practice.

RULE 9. Defamation of Competitors or Disparagement of Their Products.

The defamation of competitors by falsely imputing to them dishonorable conduct, inability to perform contracts, questionable credit standing, or by other false representations, or the false disparagement of competitors' products in any respect, or of their business methods, selling prices, values, credit terms, policies, or services, is an unfair trade practice.

RULE 10. Procurement of Competitors' Confidential Information by Unfair Means and Wrongful Use Thereof.

It is an unfair trade practice for any member of the industry to obtain information concerning the business of a competitor by bribery of an employee or agent of such competitor, by false or misleading statements or representations, by the impersonation of one in authority, or by any other unfair means, and to use the information so obtained in such manner as to injure said competitor in his business or to suppress competition or unreasonably restrain trade.

RULE 11. Commercial Bribery.

It is an unfair trade practice for a member of the industry, directly or indirectly, to give, or offer to give, or permit or cause to be given, money or anything of value to agents, employees, or representatives of customers or prospective customers, or to agents, employees, or

representatives of competitors' customers or prospective customers, without the knowledge of their employers or principals, as an inducement to influence their employers or principals to purchase or contract to purchase products manufactured or sold by such industry member or the maker of such gift or offer, or to influence such employers or principals to refrain from dealing in the products of competitors or from dealing or contracting to deal with competitors.

RULE 12. *Enticing Away Employees of Competitors.*

It is an unfair trade practice to wilfully entice away the employees of competitors with the purpose and effect of unduly hampering, injuring, or prejudicing competitors in their businesses.

RULE 13. *Consignment Distribution.*

It is an unfair trade practice for any member of the industry to employ the practice of shipping industry products on consignment or pretended consignment for the purpose and with the effect of artificially clogging or closing trade outlets and unduly restricting competitors' use of said trade outlets in getting their products to consumers through regular channels of distribution, thereby injuring, destroying, or preventing competition or tending to create a monopoly or to unreasonably restrain trade. Nothing in this rule shall be construed as restricting or preventing consignment shipping or marketing of industry products in good faith where suppression of competition, restraint of trade, or undue interference with competitors' use of the usual channels of distribution, is not effected.

RULE 14.

(a) *Prohibited Discriminatory Prices, or Rebates, Refunds, Discounts, Credits, Etc., Which Effect Unlawful Price Discrimination.*—

It is an unfair trade practice for any member of the industry engaged in commerce,¹ in the course of such commerce, to grant or allow, secretly or openly, directly or indirectly, any rebate, refund, discount, credit, or other form of price differential, where such rebate, refund, discount, credit, or other form of price differential, effects a discrimination in price between different purchasers of goods of like grade and quality, where either or any of the purchases involved therein are in commerce,¹ and where the effect thereof may be substantially to lessen competition or tend to create a monopoly in any line of commerce,¹ or to injure, destroy, or prevent competition with any person who either grants or knowingly receives the benefit of such discrimination, or with customers of either of them: *Provided, however*—

(1) That the goods involved in any such transaction are sold for use, consumption, or resale within any place under the jurisdiction of the United States;

(2) That nothing herein contained shall prevent differentials

¹ See footnote, p. 460.

which make only due allowance for differences in the cost of manufacture, sale, or delivery resulting from the differing methods or quantities in which such commodities are to such purchasers sold or delivered;

(3) That nothing herein contained shall prevent persons engaged in selling goods, wares, or merchandise in commerce¹ from selecting their own customers in bona fide transactions and not in restraint of trade;

(4) That nothing herein contained shall prevent price changes from time to time where made in response to changing conditions affecting either (a) the market for the goods concerned, or (b) the marketability of the goods, such as, but not limited to, actual or imminent deterioration of perishable goods, obsolescence of seasonal goods, distress sales under court process, or sales in good faith in discontinuance of business in the goods concerned.

(b) *Prohibited Brokerage and Commissions.*—It is an unfair trade practice for any member of the industry engaged in commerce,¹ in the course of such commerce, to pay or grant, or to receive or accept, anything of value as a commission, brokerage, or other compensation, or any allowance or discount in lieu thereof, except for services rendered in connection with the sale or purchase of goods, wares, or merchandise, either to the other party to such transaction or to an agent, representative, or other intermediary therein where such intermediary is acting in fact for or in behalf, or is subject to the direct or indirect control, of any party to such transaction other than the person by whom such compensation is so granted or paid.

(c) *Prohibited Advertising or Promotional Allowances, Etc.*—It is an unfair trade practice for any member of the industry engaged in commerce¹ to pay or contract for the payment of advertising or promotional allowances or any other thing of value to or for the benefit of a customer of such member in the course of such commerce as compensation or in consideration for any services or facilities furnished by or through such customer in connection with the processing, handling, sale, or offering for sale of any products or commodities manufactured, sold, or offered for sale by such member, unless such payment or consideration is available on proportionally equal terms to all other customers competing in the distribution of such products or commodities.

(d) *Prohibited Discriminatory Services or Facilities.*—It is an unfair trade practice for any member of the industry engaged in commerce¹ to discriminate in favor of one purchaser against another purchaser or purchasers of a commodity bought for resale, with or without processing, by contracting to furnish or furnishing, or by contributing to the furnishing of, any services or facilities connected with the

¹ See footnote, p. 460.

processing, handling, sale, or offering for sale of such commodity so purchased upon terms not accorded to all purchasers on proportionally equal terms.

(e) *Inducing or Receiving an Illegal Discrimination in Price.*—It is an unfair trade practice for any member of the industry engaged in commerce,¹ in the course of such commerce, knowingly to induce or receive a discrimination in price which is prohibited by the foregoing provisions of this Rule 14.

(f) *Purchases by Schools, Colleges, Universities, Public Libraries, Churches, Hospitals, and Charitable Institutions Not Operated for Profit.*—The foregoing provisions of this Rule 14 relate to practices within the purview of the Robinson-Patman Antidiscrimination Act, which Act and the application thereunder of this Rule 14 are subject to the limitations expressed in the amendment to such Robinson-Patman Antidiscrimination Act, which amendment was approved May 26, 1938, and reads as follows:

"Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That nothing in the Act approved June 19, 1936 (Public, Numbered 692, Seventy-fourth Congress, second session), known as the Robinson-Patman Antidiscrimination Act, shall apply to purchases of their supplies for their own use by schools, colleges, universities, public libraries, churches, hospitals, and charitable institutions not operated for profit." (52 Stat. 446; Supp. 4 U. S. C. Title 15, Sec. 13c.)

RULE 15. Aiding or Abetting Use of Unfair Trade Practices.

It is an unfair trade practice for any person, firm, or corporation to aid, abet, coerce, or induce another, directly or indirectly, to use or promote the use of any unfair trade practice specified in these rules.

GROUP II*

RULE A. Repudiation of Contracts.

Lawful contracts are business obligations which should be performed in letter and in spirit. The repudiation of contracts by sellers on a rising market or by buyers on a declining market is condemned by the industry.

Promulgated by the Federal Trade Commission August 16, 1940.

¹ See footnote, p. 460.

* See page VIII for headnote applicable to Group II Rules.

TRADE PRACTICE RULES

FOR THE

**SUBSCRIPTION AND MAIL ORDER BOOK
PUBLISHING INDUSTRY**

PROMULGATED SEPTEMBER 3, 1940

STATEMENT BY THE COMMISSION

Trade practice rules for the Subscription and Mail Order Book Publishing Industry, as hereinafter set forth, are promulgated by the Federal Trade Commission under its trade practice conference procedure.

The members of this industry are engaged in the sale and distribution of books on the subscription plan through agents, solicitors, canvassers, so-called outside salesmen, or others, or by mail order or other direct selling method. The rules are applicable to such business and to all persons and concerns engaged therein. The books sold by the members of this industry are of various types, including reference and other works in single or multiple volumes. The purchasers are schools, libraries, and other institutions and organizations, both public and private, as well as members of the general public. According to statistical information furnished the Commission, the total sales volume of the industry is estimated to be between \$20,000,000 and \$25,000,000 annually.

The rules have as their purpose the elimination and prevention of misrepresentation and deception and other unfair trade practices or selling methods. They are established in the interest of protecting the purchasing public and the industry and promoting observance of the requirements of laws administered by the Federal Trade Commission, without affecting or prejudicing the rights or obligations of members of the industry under any other provisions of law.

The proceeding for the establishment of trade practice rules was instituted upon application of the industry. In the course thereof a general trade practice conference, under the auspices of the Commission, was held in New York City. Subsequently, a draft of proposed rules for the industry was made available, upon public notice issued by the Commission, whereby all interested or affected parties were afforded opportunity to present their views to the Commission, including such pertinent information, suggestions, or objections as they desired to submit, and to be heard in the premises. Accordingly, public hearing pursuant to such notice was held in Washington, D. C., on August 2, 1940, and all matters there presented, or otherwise submitted, were duly received and considered.

Thereafter, and upon consideration of the entire matter, final action was taken by the Commission whereby it approved the rules hereinafter appearing.

Such rules supersede and replace the resolutions relating to Subscription Book Publishers as published by the Commission on July 31, 1924.

THE RULES

DEFINITION

For the purposes of these rules, the term "book" or "books" as herein used shall be construed as embracing any or all books, supplements, year-books, pamphlets, loose-leaf material, and other printed material, sold, offered for sale, or distributed by members of the industry, unless the context of the particular rule indicates or implies a contrary construction.

GROUP I*

RULE 1. *Misrepresentation of Books or Services.*

It is an unfair trade practice to make or publish, or cause to be made or published, directly or indirectly, any false, misleading, or deceptive statement or representation, whether in the form of advertisement, testimonial, endorsement, depiction, illustration, or other form of representation, however disseminated or published, concerning the grade, quality, material, size, contents, use, value, price, origin, preparation, manufacture, or date of publication or copyright of any book, or the current or up-to-date character thereof, or concerning the grade, quality, material, substance, size, manufacture, or value of the binding thereof or the lettering thereon, or concerning any service offered in connection therewith, or in any other material respect.

RULE 2. *Misrepresentation of Books as Being Free.*

In the sale or offering for sale of books, it is an unfair trade practice to represent, through advertising or otherwise, that such books are given free and that payments required in connection therewith are for supplements thereto or for extension, revision, continuation, yearbook, or other similar services, or for services to be rendered by a research or other bureau, when such is not the fact; or that a certain number of books have been reserved to be given away free of cost to selected persons as a means of advertising, or that a certain number of persons in a community have been designated to receive a book or books or any form of service free of cost, when such is not the fact.

RULE 3. *Use of Deceptive Name or Title.*

In the sale or offering for sale of books, it is an unfair trade practice:

* See page VIII for headnote applicable to Group I Rules.

(a) To pass off one book for another by use of the same or a deceptively similar name or title; or

(b) To use a name or title different from that under which such book or substantially the same text or content material is being or has previously been published and offered for sale in any form, with the capacity and tendency or effect of misleading or deceiving purchasers or prospective purchasers by reason of the use of such name or title or by reason of the failure to make proper disclosure of such other name or title; or

(c) To represent, in advertising or otherwise, by the use of an edition title such as "Teachers' Edition," "Doctors' Edition," "Lawyers' Edition," or "School Edition," or by other means, that the contents of a book or edition have been especially adapted for the use of a certain profession or class of persons, when such is not the fact; or

(d) To use any name or title which has the capacity and tendency or effect of misleading or deceiving purchasers or prospective purchasers with respect to the purpose, use, contents, or scope of such book, or in any other material respect.

RULE 4. *Deceptive Use of Name, Initials, or Signature in Connection with Articles Brought Forward from Earlier Edition.*

In respect to articles or textual material brought forward from a former edition, it is an unfair trade practice:

(a) To use in connection therewith any name, initials, or signature in such a manner as to have the capacity and tendency or effect of misleading or deceiving purchasers or prospective purchasers into the belief:

(1) That the name, initials, or signature so used is that of the actual author of the article or textual material, when such is not the fact; or

(2) That the article or material is new, when such is not true in fact; or

(3) That the article or material has been revised, when no substantial revision has been made; or

(4) That the article or material or any substantial part thereof has not previously been published or used in any former editions, or otherwise, when such is not true in fact; or

(b) To mislead or deceive in any other respect.

RULE 5. *Deceptive Use of Copyright Renewal Date.*

It is an unfair trade practice to set forth the date of any copyright renewal in such manner, whether by omission of other copyright dates or otherwise, as to have the capacity and tendency or effect of misleading or deceiving purchasers or prospective purchasers into the

belief that such renewal date is the date of original copyright or publication, or of otherwise misleading or deceiving purchasers or prospective purchasers with respect thereto.

(NOTE.—When other applicable copyright dates are properly set out and no deception, direct or indirect, is involved in the omission of a copyright date prior to 1909, such copyright date prior to 1909 need not be shown under this rule.)

RULE 6. *Misrepresentation as to Editor, Contributing Editor, Etc.*

It is an unfair trade practice to represent, by means of any listing, advertisement, or in any other manner, that any person is a contributor to, or contributing or other editor of, a book, when such is not true in fact, or to make any false, misleading, or deceptive representation with respect to any person who is, or is represented as being, a contributor to, or contributing or other editor of, a book.

RULE 7. *Deceptive Testimonials.*

It is an unfair trade practice for any member of the industry to use any testimonial or purported testimonial, or representation with respect thereto, which is false, misleading, or deceptive; or to cause any testimonial or part thereof to be used in such manner as to have the capacity and tendency or effect of misleading or deceiving purchasers or prospective purchasers into the belief:

(a) That the testimonial was given without solicitation or payment therefor, when such is not the fact; or

(b) That the testimonial was given by a school, library, or other institution, when in fact such testimonial was given by an individual connected therewith but acting in a personal capacity and not officially on behalf of such school, library, or other institution; or

(c) That the testimonial is a bona fide and genuine testimonial given by a person whose name is used in connection therewith, when the testimonial was not given by such person, or when the testimonial was not given with respect to the particular book or books to which it purports to relate, or when the testimonial is otherwise inapplicable or misleading or deceptive.

In order to avoid deception in the use of bona fide and genuine testimonials, the complete testimonial should be given wherever practicable, and words, phrases, sentences, or other parts of such testimonial, shall not be separated from their context, or rearranged or otherwise used in such manner as to have the capacity and tendency or effect of misleading or deceiving purchasers or prospective purchasers in any respect.

RULE 8. *Disclosure of Nature and Scope of Services Offered.*

To the end that purchasers and prospective purchasers may not be

misled or deceived with respect to any research, revision, extension, continuation, yearbook, or other type of service offered by a member of the industry, full and nondeceptive disclosure of the nature and scope of the particular service offered should be made in all contracts and order forms, sales literature, advertising, and other representations having reference to such service; and it is an unfair trade practice to conceal such information or to fail or refuse to make said disclosure thereof, such concealment or nondisclosure having the capacity and tendency or effect of misleading or deceiving purchasers or prospective purchasers.

RULE 9. *Misrepresentation as to Research Service.*

Where a research service or a service for the answering of questions is offered, it is an unfair trade practice (a) to represent, in advertising or otherwise, that the service offered is performed by an organization which is in fact nonexistent, or that such organization or any organization is independent of the industry member offering the service, when such is not the fact, or to use the names of well-known authors, editors, or authorities in connection with such service, when the persons named do not actually perform or supervise such research or actually answer or supervise the answering of such questions; or (b) to cause any other misrepresentations to be made regarding any such service offered.

RULE 10. *Misrepresentation as to Price Reductions.*

It is an unfair trade practice for any member of the industry to represent, in advertising or otherwise, that the price of any book or service has been reduced from what is in fact a fictitious price, or that such price is a reduced or special price when such price is in fact the regular selling price of such book or service, or that the regular price thereof is higher when such is not the fact, or to otherwise falsely or deceptively represent the past, current, or future price of any book or service.

RULE 11. *Misrepresentation as to Nature of Business.*

It is an unfair trade practice for a member of the industry:

(a) To use, or to cause or permit to be used, any representation which has the capacity and tendency or effect of misleading or deceiving purchasers or prospective purchasers into the belief:

(1) That such member is an association or organization of educators, teachers, engineers, or scientists, or of persons having other professional or technical training or other qualifications, when such is not true in fact; or

(2) That the business of such member is other than a private business enterprise operated for profit, when such is not the fact; or

(3) That such member is a book publisher, when such is not the fact; or

(b) To misrepresent in any manner the character, extent, or type of the business of such member.

RULE 12. Misrepresentation as to Connection with Educational Institution.

It is an unfair trade practice for any member of the industry to represent, through advertising or otherwise, that it or its sales representatives are connected in any manner with any school, college, university, or other educational institution, or with any board or committee thereof, or with any other organization, or that any book or service sold or offered by it is required, endorsed, or approved by any such institution, board, committee, or organization, when such is not the fact.

RULE 13. Misrepresentation as to Societies, Clubs, or Organizations.

It is an unfair trade practice for any member of the industry, in selling or promoting the sale of books or services, to offer membership in fictitious societies, clubs, or other organizations; or to make any representations or claims which imply the existence of any such fictitious society, club, or organization; or to misrepresent the value, facilities, services, functions, character, or standing of any existing society, club, or organization; or otherwise to make any misleading or deceptive representations or claims as to any society, club, or organization which is in existence, or is intended or expected to be organized, or is fictitious.

RULE 14. Misrepresentation as to Earnings of Sales Representatives.

It is an unfair trade practice for any member of the industry to make or publish, or cause to be made or published, directly or indirectly, any false, misleading, or deceptive statement or representation, by way of advertisement or otherwise, concerning the salary, commission, income, earnings, or other remuneration which agents, canvassers, solicitors, or other sales representatives receive or may receive.

RULE 15. Securing Sales Representatives by Unfair Means.

In connection with, or in the promotion of, the sale or distribution of books, the conditions under which specified amounts, in the form of salaries, commissions, or other form of payment, will be paid to agents, canvassers, solicitors, or other representatives, should be clearly and nondeceptively stated in all advertisements for sales representatives in which payment of specific or minimum amounts is guaranteed or offered, to the end that misunderstanding and deception may be avoided and prevented; and it is an unfair trade practice to secure or attempt to secure the services of any person as agent, canvasser, solicitor, or other sales representative by means of misleading or decep-

tive representations with respect to amounts guaranteed or offered such representatives, or by any other unfair means.

RULE 16. Promoting or Permitting Use of Deceptive Sales Literature, Etc.

The members of the industry shall use due diligence to prevent the use, by their salesmen, agents, representatives, distributors, dealers, or other sellers, of any representations or other acts or practices which, directly or indirectly, may tend to mislead or deceive purchasers or prospective purchasers. Sales literature, advertisements, contracts, and other documents or representations, written or oral, supplied by members of the industry to them or to purchasers or prospective purchasers, shall be truthful and clearly nondeceptive, free from misleading or false implications or other matter which may tend to deceive or mislead. And it is an unfair trade practice for any member of the industry, directly or indirectly, to cause to be used, or to aid, encourage, or abet a salesman, agent, representative, distributor, dealer, or other person in the use of, any sales literature, advertisements, contracts, documents, or written or oral representations, or selling methods, which are calculated to mislead or deceive, or which have the capacity and tendency or effect of misleading or deceiving, purchasers or prospective purchasers in respect of any book or service offered by such member or in any other material respect.

RULE 17. Inducing Breach of Contract.

Inducing or attempting to induce the breach of existing lawful contracts between competitors and their customers or their suppliers, or between a competitor and his agent or other representative, by any false or deceptive means whatsoever, or interfering with or obstructing the performance of any such contractual duties or services by any such means, with the purpose and effect of unduly hampering, injuring, or prejudicing competitors in their businesses, is an unfair trade practice.

RULE 18. Enticing Away Employees of Competitors.

Wilfully enticing away the employees of competitors with the purpose and effect of unduly hampering, injuring, or prejudicing competitors in their businesses is an unfair trade practice.

RULE 19. Defamation of Competitors or Disparagement of Their Products.

The defamation of competitors by falsely imputing to them dishonorable conduct, inability to perform contracts, questionable credit standing, or by other false representations, or the false disparagement of the grade, quality, material, contents, use, value, preparation, or manufacture of books sold or offered for sale by competitors, or of their selling methods, prices, credit terms, policies, services, or values, is an unfair trade practice.

RULE 20. Imitation of Trade-marks or Trade Names.

The imitation or simulation of the trade-marks or trade names of competitors, with the capacity and tendency or effect of misleading or deceiving purchasers or prospective purchasers, is an unfair trade practice.

RULE 21.

(a) *Commercial Bribery.*—It is an unfair trade practice for any member of the industry, directly or indirectly, to give, or offer to give, or permit or cause to be given, money or anything of value to employees or agents of customers or prospective customers, without the knowledge of their employers or principals, as an inducement to influence or cause their employers or principals to purchase or contract to purchase books or services of such industry member, or to refrain from purchasing books or services from competitors of such member.

(b) *Subsidizing School Officials to Influence Purchase of Books by Pupils or Parents.*—Subsidizing school principals, teachers, or school officials, or making payments or gifts to them, directly or indirectly, to induce or cause them to recommend, influence, or promote the purchase of books of a member of the industry by pupils or the parents or guardians of pupils, is an unfair trade practice.

RULE 22. Aiding or Abetting Use of Unfair Trade Practices.

It is an unfair trade practice for any person, firm, or corporation to use or to aid, abet, coerce, or induce another, directly or indirectly, to use or promote the use of any unfair trade practice specified in these rules, or of any other unfair method of competition or unfair or deceptive act or practice.

Promulgated by the Federal Trade Commission September 3, 1940.

TRADE PRACTICE RULES

FOR THE

LINEN INDUSTRY

PROMULGATED FEBRUARY 1, 1941

STATEMENT BY THE COMMISSION

Trade practice rules for the Linen Industry, as hereinafter set forth, are promulgated by the Federal Trade Commission under its trade practice conference procedure.

The general purpose of the rules is to foster and promote fair competitive conditions and the protection of industry, trade, and the purchasing public. To this end the rules provide for proper identification and disclosure of the fiber content of articles or merchandise containing, or purporting to contain, linen in whole or in part. Provision is made for proper designations and descriptions of such articles or merchandise in order that the buying public may be correctly informed as to their composition and that misrepresentation and deceptive concealment may be avoided. Shrinkage rules respecting linen products, and provisions relating to other unfair practices, are also included.

Products composed of or containing linen are of large variety and wide use. They constitute a major group of the products of the textile industries. The combined retail sales value of so-called fancy linens, handkerchiefs, household linens, dress linens, and other linen and part-linen products generally, is reported as aggregating around \$110,000,000 annually.

The proceeding for the establishment of trade practice rules was instituted upon application from the industry. In the course thereof a general trade practice conference was held in New York City under the auspices of the Commission, at which conference proposed rules were considered and were thereupon submitted on behalf of the industry to the Commission for its consideration. Following preliminary study and necessary revision, a complete draft of the proposed rules in appropriate form was made available to all interested and affected parties upon public notice, whereby they were afforded opportunity to present their views to the Commission, including such pertinent information, suggestions or objections as they desired to submit, and to be heard in the premises. Accordingly, public hearing pursuant to such notice was held in Washington, D. C., and all matters there presented, or otherwise submitted, were duly received and considered.

Upon consideration of the entire matter final action has been taken

by the Commission, whereby it has approved and received, respectively, the rules hereinafter appearing in Group I and Group II.

Such adjustment as may be necessary on the part of members of the industry to bring their labeling practices into harmony with these rules shall be made as promptly as possible and not later than May 1, 1941. This shall not, however, be construed as permitting of the use meanwhile of any existing or other labels, marks or practices which are false, misleading or deceptive, or which are otherwise contrary to law.

THE RULES GROUP I*

The unfair trade practices which are embraced in these Group I rules are considered to be unfair methods of competition, unfair or deceptive acts or practices, or other illegal practices, prohibited, within the purview of the Federal Government, by acts of Congress as construed in the decisions of the Federal Trade Commission or the courts; and appropriate proceedings in the public interest will be taken by the Commission to prevent the use, by any person, partnership, corporation or other organization, of such unlawful practices in or directly affecting interstate commerce. Such provisions of the rules express requirements which are applicable to all sellers, whether importers, manufacturers, converters, distributors, dealers or other vendors. Each has the definite responsibility of seeing to it that the merchandise as it is advertised or introduced by him into the channels of trade or commerce is properly labeled and represented in keeping with the requirements of such Group I rules.

The labeling and other requirements respecting the fiber, yarn, thread, strands, fabric, or garment or other product covered by the rules, apply to such merchandise in whatever form it may be sold or distributed.

In the case of finished garments or articles manufactured or imported for distribution through the channels of trade to the ultimate consuming public without intermediate processing, it is deemed proper practice for manufacturers or importers thereof not only to label the garment or article with proper disclosure of material content and such other disclosure as is required by these rules, but also to cause the labeling (tagging or branding) to be done in such manner as to carry through the ordinary channels of trade to the ultimate consumer and be appropriate in the sale or resale of the garment or article to the consuming public, thereby rendering further or additional labeling as to material content unnecessary so long as the proper label, tag or brand affixed by the

* See page VIII for headnote applicable to Group I Rules.

manufacturer or importer remains on the garment or article and the material content of the product has not been changed. This shall not, however, be construed as relieving dealers or other vendors of any of their responsibility under the rules of seeing to it that the garment or article bears a proper and appropriate label, brand or tag disclosing the information required by these rules to be disclosed and that it is not falsely or deceptively labeled, nor otherwise marked, advertised, represented, or offered for sale in a manner contrary to the provisions of these rules.

RULE 1.

(a) *Linen (and Flax) Defined.*—"Linen" is the generic term for textile fiber of the flax plant and for the thread, strands, yarn or fabric produced from such fiber. For the purpose of these rules, the term "linen" or "flax" as applied to textile fiber shall mean the fiber of the flax plant.

(b) *Deceptive Passing Off of Linen or Flax.*—It is an unfair trade practice to cause any linen or flax fiber, or any yarn, thread, strands, fabric, garment or other article composed of linen or flax, to be sold, offered for sale, distributed, advertised, described, branded, labeled or otherwise represented: (1) as not being linen or flax; or (2) as being something other than linen or flax; or (3) without disclosure of the fact that such merchandise is linen or flax, made clearly and unequivocally in the invoices, and in labels, tags, or marks attached to the merchandise, and in whatever advertising matter, sales promotional descriptions or representations thereof may be used however disseminated or published, where such nondisclosure has the capacity and tendency or effect of misleading or deceiving the purchasing or consuming public.

(c) *Other Misrepresentations.*—It is an unfair trade practice to cause any fiber, yarn, thread, strands, fabric, garment or other article containing, or purporting to contain, linen or flax, in whole or in part, to be offered for sale, sold or distributed under any conditions of deceptive concealment of the fiber content or under any other deceptive or misleading conditions or representations whatever. (See Rule 8 respecting passing off of non-linen fiber or products as and for linen.)

RULE 2. Pure Linen.

(a) It is an unfair trade practice to use the term "linen" or "flax" (not appropriately qualified) or the term "pure linen," "pure flax," "all linen" or "all flax," or any other word, term, phrase, designation or representation of similar import, as descriptive of any fiber, yarn, thread, strands or fabric, or garment or other article containing the same, (1) the fiber content of which is not linen exclusively; or (2)

which contains any other fiber; or (3) which contains any foreign or added non-fibrous substance or material except the necessary dyeing and finishing materials required to produce the color and finish of the product not exceeding 5% by weight of the product in its finished state. Nothing in this rule shall be construed as permitting the use of dyeing or finishing materials, either within or in excess of such 5%, for the purpose or with the result of thereby deceptively loading the product with excess or unnecessary dyeing or finishing materials.

(b) *Terms Applied to Linen Content of Product.*—Nothing in this rule shall be construed as prohibiting the use of the term or phrase "linen," "flax," "pure linen," "pure flax," "all linen" or "all flax" in a truthful and nondeceptive manner as descriptive of the pure linen content of a mixed yarn, thread, strand, fabric or product, provided it is made plain that such term or phrase applies only to the pure linen content of the article or product and the entire fiber content of the article or product is then and there clearly and nondeceptively disclosed in full conformity with the provisions of Rule 7 relating to the disclosure of content of mixed goods.

(c) *Tolerance as to Selvage.*—Nothing in these rules shall be construed as prohibiting the truthful and nondeceptive use of the terms "linen," "flax," "pure linen," "pure flax," "all linen" or "all flax" as descriptive of fabric which is composed wholly of linen with the exception of a small and inconsequential amount of necessary non-linen fiber in the selvage, *provided* the total amount of such non-linen fiber does not exceed $\frac{1}{2}$ of 1% in the case of handkerchiefs or handkerchief fabrics, and in the case of other fabrics does not exceed 2%, and *provided further*, that no deception, direct or indirect, is practiced with respect to such selvage or the fiber content of the article. Where the selvage contains non-linen fiber in excess of such stated limits of $\frac{1}{2}$ of 1% and 2%, respectively, disclosure of the fiber content shall be made in accordance with the provisions of Rule 7 relating to mixed goods.

(d) *Decorations.*—See paragraph (f) of Rule 7 for provisions as to the use of such terms as "linen," "pure linen," etc., in disclosure of fiber content where product is composed wholly of linen with the exception of decorative material containing fiber other than linen.

RULE 3. "Lin," "Lyn," Etc.

It is an unfair trade practice to use, as descriptive of fiber, yarn, thread, strands or fabric, or garment or other article made therefrom, the word, term or syllable "lin," "linn," "lyn" or "lynn," or other word, term or syllable of similar import, alone or as part of a word or in combination with one or more words, terms, syllables or representations, in such manner as thereby to import or imply that said fiber, yarn, thread, strands, fabric, garment or other article is com-

posed of linen, either in whole or in part, when such is not true in fact; or to use any such word, term, syllable or combination in any other manner which has the capacity and tendency or effect of misleading or deceiving the purchasing or consuming public.

RULE 4. *Terms "Linen," "Flax," "Silk," "Wool," "Cotton," Etc.*

It is an unfair trade practice to use, or cause to be used, as descriptive of any textile merchandise, the word "linen," or word, term, designation or representation of similar import, either alone or in connection with the word "wool," "cotton," "rayon" or other word, term or representation, such as, for example, "Cotton Linen," "Linen Cotton," "Rayon Linen," "Linen Rayon," "Grass Linen," "Canton Linen," "Rice Linen," "Pineapple Linen," etc., so as to import or imply that the merchandise or article is linen or contains linen or has the properties of linen when such is not the fact. Nothing in this rule, however, shall prohibit the use of the word "linen," "flax," "silk," "rayon," "wool" or "cotton" in any truthful and nondeceptive designation or representation made in conformity with the requirements of Rule 7 as to disclosure of mixed goods.

RULE 5. *Misuse of Term "Linen Product," Etc.*

It is an unfair trade practice to cause any article or merchandise to be offered for sale, sold, advertised, described, branded, labeled or otherwise represented, directly or by implication, as being a linen or flax product when such article or merchandise is not composed of pure linen to the extent of at least 50% by weight and the entire fiber content of such article or merchandise is not then and there fully and nondeceptively disclosed in accordance with the applicable provisions of Rule 7 relating to the disclosure of fiber content of mixed goods, or when such representation is otherwise used in a false, misleading or deceptive manner.

RULE 6. *Misuse of Term "Part Linen," Etc.*

It is an unfair trade practice to use the term "part linen," or word, term or representation of similar import, as descriptive of any article, product, or any part thereof, (1) when such article, product, or part thereof, does not contain linen in substantial proportion, and the fact that the amount or proportion of linen present is insubstantial or inappreciable is not therewith fully disclosed, together with the entire fiber content of the article or product; or (2) when, although containing linen in substantial part, the entire fiber content of such article or merchandise or product is not then and there fully and nondeceptively disclosed, in accordance with the provisions of Rule 7 relating to the disclosure of fiber content of mixed goods; or (3) when such term "part linen," or word, term or representation of similar import, is used under any other false, misleading or deceptive condition.

RULE 7. Mixed Goods.

In the case of any yarn, thread, strands, fabric, garment or other article containing linen (or flax) and other fiber or fibers, full and nondeceptive disclosure of the fiber content of such merchandise should be made in accordance with the provisions hereinafter set forth in this rule, to the end that the purchasing and consuming public may be correctly informed as to the contents of such merchandise and that thereby deceptive concealment and misrepresentation in respect thereto and other unfair methods of competition or unfair or deceptive acts or practices in the marketing of such merchandise in the channels of trade and to the public may be avoided and prevented. And it is an unfair trade practice to conceal the presence of any fiber constituent of such merchandise or to fail or refuse to make said disclosure of fiber constituents in accordance with the following subsections of this rule, such concealment or failure or refusal to so make such disclosure having the capacity and tendency or effect of misleading or deceiving the purchasing or consuming public.

(a) *Fibers to be Named and Set Forth in Order of Predominance by Weight.*—Such disclosure of fiber content of said products, pursuant to this rule, shall be made by accurately designating and naming each constituent fiber thereof in the order of its predominance by weight, beginning with the largest single constituent, such as, for example, "Linen, Cotton and Rayon" for yarn, thread, strands, fabric, garment or other article composed of linen, cotton and rayon, each present in substantial proportion, with linen present in larger proportion than either cotton or rayon and with the cotton present in greater proportion than rayon; subject to the following:

(b) *Labels, Tags, Invoices, Advertising Matter.*—Said disclosure shall be made in labels, brands or tags attached to the merchandise and in the invoices, and in such advertising and sales promotional descriptions or representations of the product as may be used however disseminated or published. Said disclosure shall also be made in such other documents, passing from seller to purchaser, as may be necessary to fully inform purchasers of the fiber content of the merchandise and to avoid and prevent the sale or resale of the merchandise under deceptive or misleading conditions. (See paragraph (c) of Rule 7 for special provision applicable to disclosure in invoices.)

(c) *Use of Terms "Other Fibers" and "Miscellaneous Fibers" in Making Disclosure of Fiber Content.*—Miscellaneous fibers present in the product not exceeding 5% in the aggregate may be designated and disclosed under this rule as "Other Fibers" or "Miscellaneous Fibers," provided disclosure is made, in accordance with the requirements of these rules, of the fibers composing the remaining 95% or more of the total fiber content of the product, together with the percentage of each

such fiber comprising such proportion of 95% or more, and provided further that such fiber content designated and disclosed as "Other Fibers" or "Miscellaneous Fibers" is not otherwise misrepresented. Illustrative examples of the disclosure provided under this paragraph are as follows:

"50% Linen
45% Cotton
Miscellaneous Fibers"

or
"50% Cotton
45% Linen
Other Fibers"

or
"50% Linen
45% Rayon
5% Other Fibers"

for products composed of the respective, stated percentages of linen, cotton and rayon, with the remainder composed of other fibers the proportion or percentage of each of which is not known or readily ascertainable, including such small additional amounts of rayon, cotton or other fiber as may be present due to unavoidable variations in manufacturing processes.

(d) *Disclosure of Percentages of Fiber.*

(I) In making said disclosure of fiber content under this rule, the percentage of each specifically named fiber shall be given if such fiber is present in an amount which does not exceed 5% of the total fiber content of the article or product; *provided, however*, if the total non-linen fiber is present as selvage or decorations such as decorative stripe, border, embroidery, lace or other decoration, then the provisions of paragraphs (f) and (g) of this Rule 7, and of Rule 2 relating to disclosure of non-linen fiber in selvage and decorations, shall apply.

(II) In making disclosure of fiber content under this rule, the respective percentage of each specifically named fiber present shall also be given in all other instances where the omission of such statement of percentages is likely to mislead or deceive, or has the capacity and tendency or effect of misleading or deceiving, the purchasing or consuming public into the erroneous belief that said fiber is present in a greater or less proportion than is in fact true, or is misleading or deceiving in any other respect.

(NOTE.—It is deemed proper and advisable, in the interest of promoting fair methods of competition and the protection of the purchasing and consuming public from confusion, deception and unfair practices, that the percentage of each specifically named fiber present be given in all cases; such as, for example:

"65% Linen
20% Cotton
15% Rayon"
or
"45% Linen
30% Cotton
25% Rayon"
or
"65% Ramie
35% Rayon"

for products composed of such respective fibers in the percentages named. *See also Rule B of Group II.*)

(III) For purposes of making disclosure and determining the relative percentages or proportions of linen, cotton, rayon, silk or other fiber in any article or product composed of two or more such fibers, a tolerance of not exceeding 2% shall be allowed, where such tolerance is necessary because of unavoidable variations in manufacturing processes or because of the impossibility of more accurately calculating the percentages of the different fibers present. However, no tolerance shall apply or be allowed in case of representations to the effect that the fiber content is composed wholly of linen or that linen or any other fiber is present in not less than, or not more than, a certain amount or percentage, as for example, "Cotton with not less than 25% Linen" or "Linen with not more than 25% Cotton" which may be used in a nondeceptive manner for articles or products having the respective fabric composition so designated.

(e) *Articles Consisting of a Union of Two Fibers.*—In the case of so-called union handkerchief fabrics, or other fabrics or articles, composed wholly of cotton and linen in substantially equal proportions not exceeding 5% variation, the fiber content thereof may be disclosed as "Cotton and Linen" or as "Linen and Cotton." Where percentages of the cotton and/or linen are stated, or are required to be stated, such percentages shall conform to the other requirements of these rules applicable to percentages.

(f) *Decorations.*—Where, in respect of an article containing linen, the total non-linen content of such article is present in the form of decorative stripe, border, embroidery, lace or other decoration, obviously apparent as such, the fiber content of such article may be designated, for the purpose of making disclosure under this rule, by adding to the term "Linen" or "Flax," or "All Linen," "Pure Linen," "All Flax" or "Pure Flax," a phrase or statement clearly and nondeceptively setting forth the fact that such decorative stripe, border, embroidery, lace or other decoration is cotton, rayon, silk or other designated fiber or combination of fibers, as the case may be, such as, for example:

"Pure Linen,
Cotton Decorations"

"All Flax
except Rayon Border"

"Pure Linen,
Cotton Embroidery"

"Linen
with Cotton Lace"

"Pure Linen
decorated with Rayon"

"Linen
with Rayon and Silk Decorations"

"Pure Linen
with 10% Silk Decorations"

"All Linen
with Cotton Border."

Exception as to 5% Non-Linen Content.—Where, however, the product is composed wholly of linen, with the exception of non-linen fibers not exceeding 5% by weight of the entire fiber content, no specific disclosure need be made of the fiber content of such non-linen portion if and when the linen content, together with the percentage thereof, is fully and nondeceptively disclosed, as for example, "95% Linen" or "95% Flax." Where the non-linen content in the article not exceeding 5% is confined to decorations (the remainder of the product being composed entirely of linen exclusive of respective selvage tolerances specified in Rule 2-c), such product may be designated by the unqualified terms "Linen" or "Flax" without giving the percentage thereof or stating the composition of such decorations; *provided*, that in any case under this paragraph no deception is practiced in respect of the product or the non-linen portion thereof.

(g) *Selvages Which Exceed the Respective Tolerance of 2% or 1/2 of 1% Provided for in Rule 2.*—Where the amount of cotton in the selvage of a linen article exceeds respectively the 2% and the 1/2 of 1% tolerance provided for in Rule 2, disclosure of the fiber content of such selvage should be made by including the same as part of the general fiber content of the article, or by adding a designation disclosing the fact that such selvage is cotton, as for example, "Cotton Selvage." Nothing in this paragraph, however, shall be construed as preventing the truthful and nondeceptive use of such designation as "95% Linen," provided for in paragraph (f) of this rule, where the product consists entirely of linen with the exception of not to exceed 5% non-linen fiber.

(h) *Paddings, Stiffening, Sewing Thread, Etc.*—In making such disclosure under this rule with respect to fiber content of ready-made or manufactured articles (such as garments or clothing), necessary structural padding, stiffening and sewing thread in such articles need not be included in the disclosure of fiber content thereof unless in labeling, advertising, selling, offering for sale or promoting the sale of the product representation is made, directly or by implication, as to the content, nature, character, quality or properties of such padding, stiffening or sewing thread, in which event the material content thereof shall be accurately and nondeceptively disclosed by appropriate phrases or designations, such as, for example, "Cotton Padding," "Silk Thread," and such other steps shall be taken as may be necessary in the circumstances to avoid deception. (The other provisions of these rules which require the disclosure of fiber content, however, apply to such padding, stiffening and sewing thread, containing or purporting to contain linen in whole or in part, when marketed as such and not as part of another manufactured article.)

(i) *Weighted Silk.*—In the event any constituent of the article or merchandise is weighted silk, full and nondeceptive disclosure of the fact that such silk is weighted, together with the proportion or percentage of such weighting, shall be made as provided in the Silk Rules promulgated by the Federal Trade Commission November 4, 1938. (Provisions of Silk Rules relating to disclosure of *weighted silk* appear in Appendix I, page 316.)

(j) *Noil Silk.*—In the event any specifically named constituent present in the article or merchandise is noil silk, full and nondeceptive disclosure of the fact that such silk is noil silk shall be made as provided in the Silk Rules promulgated by the Federal Trade Commission November 4, 1938. (Provisions of Silk Rules relating to disclosure of *noil silk* appear in Appendix II, page 317.)

(k) *Imitative or Simulative Products.*—See Rule 8 for provisions as to disclosure respecting articles or merchandise which do not contain linen but which imitate or simulate linen in whole or in part.

(l) *Loading, Adulterating or Excess Finishing Materials.*—In the event any constituent of the product contains excess finishing materials or loading or adulterating materials, disclosure thereof shall be made in conformity with the applicable provisions of Rule 9.

(m) *Sectional Articles.*—In instances where the article is composed of two or more distinct sections of different fiber composition, the fiber content of the article may be given under this rule by designating the several sections and giving the respective fiber content of each section as it exists within the section, stating the fibers within each such section in their order of predominance by weight. If any fiber so named is not present in a substantial amount within the respective section,

the percentage thereof shall also be given and such other steps shall be taken as may be necessary to prevent misrepresentation or deception. The same limitations shall apply to disclosure by sections under this paragraph as are applicable in cases where disclosure of fiber content is made on the basis of the article as a whole. In making disclosure by sections of the article under this paragraph, the respective sections to which the several designations apply shall be plainly indicated in such manner as not to be misleading or deceptive; and types of designations which purport to be applicable to sections or parts of the article to which they do not truthfully apply shall be avoided. Examples of the types of designations provided for under this paragraph are as follows:

"Pure Linen Center
Cotton and Rayon Lace"

for articles, such as doilies, having the construction and fiber composition indicated, with the lace being predominantly cotton but mixed with a substantial proportion of rayon;

or
"Linen and Rayon Center
Cotton Lace"

for articles having a fabric center with cotton lace attached, the center fabric being predominantly linen and mixed with a substantial proportion of rayon;

or
"Pure Linen
with Silk Lace"

for an article such as a handkerchief composed basically of linen fabric to which is attached lace composed wholly of silk;

or
"Rayon and Cotton Waist
Linen Skirt"

for an article such as a dress in which the waist is composed of rayon and cotton, each present in substantial proportion but with rayon predominating therein, the fiber content of the skirt being linen exclusively.

(n) *Deceptive Set-up of Disclosed Information.*—In setting forth any item, name, statement, percentage or other information required to be disclosed under this or any other rule hereof, the same shall be set forth clearly and unequivocally and not in type or manner so disproportionately enlarged, emphasized or conspicuously placed, or, on the other hand, so minimized, obscured or remotely or inconspicuously placed, as to be misleading or deceptive to the purchasing or consuming public.

(o) *Warranty Statement in Invoices.*—In respect of disclosure of fiber content in invoices provided for in this Rule 7, and in Rule 1, if, because of a multiplicity of items of different fiber composition, it is not feasible to have the fiber content of the different numbers or items set out on the face or back of the invoice or otherwise specifically listed therein, a statement in lieu of such specific listing of fiber content in the invoice may be set forth in such invoice to the effect that the seller warrants that each and every item coming under these rules and covered by such invoice is properly marked and labeled as to content in full conformity with the provisions of these rules, *provided* such products are so labeled and marked properly, and *provided further* no false or misleading designations or representations are used, nor any other deception, direct or indirect, is practiced, in or by means of such invoice. The following is an example of the above-mentioned warranty statement to be set out on invoices under the provisions of this paragraph:

"The seller hereby warrants that the fiber content of the products covered by this invoice are clearly and truthfully disclosed and marked in tags, labels or brands attached to the respective products, in accordance with the provisions of the trade practice rules for the Linen Industry."

(p) *Application of Wool Products Labeling Act of 1939.*—To the extent that any fiber, yarn, thread, strands, fabric, article or product under these rules is such as to come within the scope of the Wool Products Labeling Act of 1939, the marking, labeling and branding thereof shall be such as to meet the requirements of said Act from and after the effective date thereof. (Said Wool Products Labeling Act of 1939, Public No. 850, Seventy-sixth Congress, was approved by the President October 14, 1940, and provides that the Act shall take effect nine months after the date of its passage.)

RULE 8. *Passing off Merchandise as and for Linen.*

(a) It is an unfair trade practice to offer for sale, sell, distribute, describe, brand, label, advertise or otherwise represent, directly or indirectly, any fiber, yarn, thread, strands or fabric, or garment or other article made therefrom, as being linen or flax, or as containing linen or flax, or as having any of the properties of linen or flax, when such is not in fact true.

(b) In the case of fiber, yarn, thread, strands, fabric, garment or other article not containing linen but which has been manufactured or processed in such manner as to simulate linen or which purports to contain linen in whole or in part, or which has or is represented as having a linen finish, full and nondeceptive disclosure of the fiber content of such product and of the fact that it does not contain any linen shall be made in labels, brands or marks attached to the product, in the

invoices, and in whatever advertising or trade promotional descriptions or representations may be used in respect to the product however disseminated or published. The failure or refusal to make said full and nondeceptive disclosure of the fiber content, and to take such other steps as may be necessary to avoid and prevent deceptive concealment, confusion, misunderstanding and misrepresentation, is an unfair trade practice.

RULE 9. *Special Finishing Materials, Excess Finishing Materials, Fillers, Loading or Adulterating Materials, in Articles Containing or Purporting to Contain Linen.*

(a) This rule applies to nonfibrous materials, other than necessary dyeing and finishing materials not exceeding 5% (and exclusive of metallic weighting in silk fiber which may be contained in the product, the disclosure of which is referred to in paragraph (i) of Rule 7).

(b) The presence of such nonfibrous materials which have been added to any fiber, yarn, thread, strands or fabric shall be truthfully and nondeceptively disclosed in accordance with the following requirements of this rule, to the end that misunderstanding, confusion and deception of the purchasing or consuming public may be avoided and prevented.

(c) *Special Finishing Materials.*—In the case where such nonfibrous material has been added to the product as special finishing materials, the product shall be designated and described in such manner as will clearly and nondeceptively disclose to the purchasing and consuming public that such added finishing materials are present in the product. The term "special finishing materials" as used in this rule means such finishing materials as are added to the product for the purpose and with the effect of thereby imparting certain useful properties to the product, such as water-repellent or crease-resistant qualities, etc.

(d) *Loading and Adulterating Materials, Fillers and Excess Finishing Materials.*—In cases of fiber, yarn, thread, strands or fabric where nonfibrous materials have been added to or are present in the product as excess dyeing or finishing materials, fillers, loading or adulterating materials, full, clear and nondeceptive disclosure of the presence of such excess dyeing or finishing materials, fillers, or loading or adulterating materials, and of the maximum percentage or proportion in which such materials are present, shall be made in tags, labels or brands attached to the product, in the invoices, and in whatever advertising or trade promotional descriptions or representations may be used in respect to the product however disseminated or published.

(e) It is an unfair trade practice to fail or refuse to make such disclosure provided for in this rule, such failure or refusal having the capacity and tendency or effect of misleading or deceiving the purchasing or consuming public; and it is an unfair trade practice to omit

or fail to take such other steps as may be necessary to avoid the sale or distribution of such products in the channels of trade or to the purchasing or consuming public under false, misleading or deceptive representations or conditions.

RULE 10. *Misrepresentation and False Marking as to Size or Dimension.*

(a) It is an unfair trade practice to offer for sale, sell, distribute, mark, brand, label, advertise, describe or otherwise represent, directly or indirectly, any linen, part linen or purported linen article or product as being of a specified size or dimension when the finished size or dimension of such article is less than such specified size or dimension; *provided, however*, that if such mark, brand, label, advertisement or other representation as to size or dimension clearly and nondeceptively states that the size or dimension specified is only approximate, such as, for example, "Approximate Size . . . x . . . inches," then and in that event a tolerance of not to exceed 5% variation from the specified size or dimension in the case of fancy linen articles, or 2% variation from the size or dimension so specified in the case of other linen articles, including handkerchiefs, may be allowed to the extent that such variation is due to unavoidable variations in manufacturing or processing and not because of lack of reasonable effort to state the size or dimension accurately, and subject to the condition that no deception or confusion of purchasers is practiced in connection therewith.

(b) It is an unfair trade practice to import any linen, part linen or purported linen articles under invoices giving both the actual and/or a larger marked size, whereby the sale, distribution or resale of such articles under conditions which are false, misleading or deceptive is aided, promoted or effectuated; and it is an unfair trade practice in any other manner to use a larger marked size than the actual size, on or in connection with any linen, part linen or purported linen articles, with the capacity and tendency or effect of misleading or deceiving the purchasing or consuming public or of causing confusion or misunderstanding in the purchase or resale of such articles in the trade or in their purchase by the consuming public.

RULE 11. *"Seconds" and Deteriorated or Damaged Merchandise.*

(a) In respect of merchandise consisting of so-called "seconds," and containing or purporting to contain linen in whole or in part, it is an unfair trade practice to offer for sale, sell or distribute, or promote the sale or distribution of, such merchandise as and for merchandise of higher grade or quality, or as not being "seconds;" or to conceal the fact that such products are "seconds" and not first-class merchandise, with the capacity and tendency or effect of thereby misleading or deceiving the purchasing or consuming public.

(b) The term "seconds" as herein used shall include products

which are placed on the market by producers, processors or distributors thereof as imperfect merchandise or "seconds;" also, products which contain imperfections in material or workmanship not characteristic of first quality merchandise.

(c) In respect of merchandise containing or purporting to contain linen, in whole or in part, which has become deteriorated, damaged or otherwise impaired, it is an unfair trade practice, in selling or distributing or promoting the sale or distribution of such merchandise, to conceal such impairment or to fail or refuse to disclose the same, with the capacity and tendency or effect of thereby misleading or deceiving the purchasing or consuming public in respect to the character, quality, value or condition of the merchandise, or in any other material respect.

RULE 12. *Encouraging or Promoting Misleading Merchandising Methods, and Aiding or Abetting Unfair Practices.*

(a) It is an unfair trade practice for any person, partnership, corporation or organization to induce, aid or abet an importer, converter, manufacturer, distributor, dealer or other person or concern to cause any fiber, yarn, thread, strands, fabric, garment or other article, containing or purporting to contain linen, to be advertised, represented, offered for sale, sold or distributed through any means or devices or under any conditions which have the capacity and tendency or effect of causing, promoting or aiding the marketing of any such merchandise in the channels of trade or to the consuming public under false, misleading or deceptive circumstances or representations.

(b) It is an unfair trade practice for any person, partnership, corporation, organization or other party to aid or abet another in the use of, or coerce another to engage in, any of the unfair trade practices specified in the rules herein set forth.

RULE 13. *Deceptive Use of Word "Linen" or "Flax" as Part of Trade-mark.*

It is an unfair trade practice (a) to use the word "linen" or "flax," or word, term or representation of similar import, in any trade-mark or other mark indicative of flax or linen, when the merchandise which bears such trade-mark or other mark, or which is advertised, offered for sale, sold or distributed thereunder, is not in fact composed of flax or linen; or (b) to use such marks or the word "linen" or "flax," or word, term or representation of similar import, in any other manner, or under any other condition, which is false, misleading or deceptive.

RULE 14. *Deception as to Origin.*

In offering for sale, selling, advertising, branding, marking, labeling or otherwise representing any fiber, yarn, thread, strands, fabric, garment or article containing or purporting to contain linen in whole or

in part, it is an unfair trade practice to use, alone or in conjunction with any other word or representation, the name of a country or locality, or an adjective, symbol, device or depiction indicating a country or locality of origin, which in any manner is false, misleading or deceptive in respect of the country or locality of origin of the product or of any embellishment or part thereof, or which has the capacity and tendency or effect of causing purchasers or consumers to believe that such product originated or was manufactured in that country or locality when such is not the fact.

(NOTE.—Imported articles or merchandise shall be properly marked as to foreign origin in accordance with the requirements of the customs laws or regulations and other applicable provisions of law or regulation relating to the marking of imported articles; and no misrepresentation or deception, directly or by implication, shall be practiced in the sale or distribution of such articles or merchandise in the channels of trade or to the consuming public.)

RULE 15. Use of Terms "*Hand Spun*," "*Hand Woven*," "*Hand Loomed*," "*Hand Patterned*," "*Hand Drawn*," "*Hand Blocked*," "*Hand Screened*," "*Hand Printed*," "*Hand Embroidered*," and *Similar Representations*.

It is an unfair trade practice (a) to brand, label, mark, advertise, offer for sale, sell or otherwise represent, any fiber, yarn, thread, strands, fabric, garment or other product, containing or purporting to contain linen in whole or in part, as being "*Hand Spun*," "*Hand Woven*," "*Hand Loomed*," "*Hand Patterned*," "*Hand Drawn*," "*Hand Blocked*," "*Hand Screened*," "*Hand Printed*" or "*Hand Embroidered*," when such is not true in fact; or (b) to describe the method of manufacture or application of any part or embellishment thereof by designation or representation which is not truly descriptive of the method of manufacture or application embodied in such article or product, part or embellishment thereof, or by designation or representation which is otherwise false, misleading or deceptive.

RULE 16. Deceptive Pricing.

(a) In the sale, offering for sale or distribution of articles or merchandise containing or purporting to contain linen in whole or in part, or in advertising, describing, branding, labeling or representing such articles or merchandise, it is an unfair trade practice

(1) to use advertisements or representations stating, purporting or implying that the prices for such articles or merchandise so advertised or represented have been reduced or are reduced prices when such represented or purported price reductions are fictitious or are otherwise false, misleading or deceptive; or

(2) to use advertisements or representations which present former prices or so-called list prices or comparative prices which

are exaggerated, fictitious or otherwise false, misleading or deceptive.

(b) It is an unfair trade practice for any member of the industry, directly or indirectly, to use or to supply to dealers, or to aid or assist in the use of, price tags, labels or similar devices which are knowingly false, fictitious or exaggerated, or which such member has reason to believe are intended to be used or will be used by dealers or salesmen for the purpose of misleading or deceiving the purchasing or consuming public in respect to price, value, or in any other material respect.

RULE 17. Deceptive Advertising of Group Offerings, Etc.

In offering for sale, selling or distributing merchandise containing or purporting to contain linen in whole or in part, whether at so-called special sales, clearance sales, bargain sales or otherwise, it is an unfair trade practice to use false, misleading or deceptive advertisements or representations to the effect that the articles so offered or advertised are composed wholly or in large or substantial proportion of well-known brands of linen articles, or of articles of reputed high quality, or of articles of a specific kind or of illustrated or featured patterns or designs, (a) when in fact none or only a small or insubstantial proportion of such respective types of articles is included in the merchandise so advertised or offered for sale; or (b) when in fact there have been added to such merchandise articles of inferior or cheaper grade or quality and the fact that such cheaper or inferior articles are included in the merchandise so advertised and offered is deceptively concealed from the advertisement and from purchasers; or (c) when for any other reason said advertisement or offering for sale is misleading or deceptive to the purchasing or consuming public.

RULE 18. Misrepresentations in Miscellaneous Respects.

The use, concerning any product containing or purporting to contain linen in whole or in part, of advertisements, marks, brands, labels or representations of any kind, however disseminated or published, which have the capacity and tendency or effect of misleading or deceiving the purchasing or consuming public with respect to the embellishments or decorations of the product, the so-called crease-resistant or non-crushable character of the product, the weave, grade, quality or character of the fiber content, or of the finished article, or with respect to the production, origin, manufacture or distribution of the product, or any part thereof, or in any other material respect, is an unfair trade practice.

OTHER UNFAIR OR MONOPOLISTIC PRACTICES

RULE 19.

(a) *Prohibited Discriminatory Prices, or Rebates, Refunds, Dis-*

counts, Credits, Etc., Which Effect Unlawful Price Discrimination.—It is an unfair trade practice for any member of the industry engaged in commerce,¹ in the course of such commerce, to grant or allow, secretly or openly, directly or indirectly, any rebate, refund, discount, or credit, or freight or transportation cost or any percentage thereof, or other form of price differential, where such rebate, refund, discount, or credit, or freight or transportation cost or any percentage thereof, or other form of price differential, effects a discrimination in price between different purchasers of goods of like grade and quality, where either or any of the purchases involved therein are in commerce,¹ and where the effect thereof may be substantially to lessen competition or tend to create a monopoly in any line of commerce,¹ or to injure, destroy, or prevent competition with any person who either grants or knowingly receives the benefit of such discrimination, or with customers of either of them: *Provided, however*—

(1) That the goods involved in any such transaction are sold for use, consumption, or resale within any place under the jurisdiction of the United States;

(2) That nothing herein contained shall prevent differentials which make only due allowance for differences in the cost of manufacture, sale, or delivery resulting from the differing methods or quantities in which such commodities are to such purchasers sold or delivered;

(3) That nothing herein contained shall prevent persons engaged in selling goods, wares, or merchandise in commerce¹ from selecting their own customers in bona fide transactions and not in restraint of trade;

(4) That nothing herein contained shall prevent price changes from time to time where made in response to changing conditions affecting either (a) the market for the goods concerned, or (b) the marketability of the goods, such as, but not limited to, actual or imminent deterioration of perishable goods, obsolescence of seasonal goods, distress sales under court process, or sales in good faith in discontinuance of business in the goods concerned.

(b) *Prohibited Brokerage and Commissions.*—It is an unfair trade practice for any member of the industry engaged in commerce,¹ in the course of such commerce, to pay or grant, or to receive or accept, anything of value as a commission, brokerage, or other compensation, or any allowance or discount in lieu thereof, except for services rendered in connection with the sale or purchase of goods, wares, or merchandise, either to the other party to such transaction or to an agent, representative, or other intermediary therein where such intermediary is acting

¹ See footnote, p. 460.

in fact for or in behalf, or is subject to the direct or indirect control, of any party to such transaction other than the person by whom such compensation is so granted or paid.

(c) *Prohibited Advertising or Promotional Allowances, Etc.*—It is an unfair trade practice for any member of the industry engaged in commerce¹ to pay or contract for the payment of advertising or promotional allowances or any other thing of value to or for the benefit of a customer of such member in the course of such commerce as compensation or in consideration for any services or facilities furnished by or through such customer in connection with the processing, handling, sale, or offering for sale of any products or commodities manufactured, sold, or offered for sale by such member, unless such payment or consideration is available on proportionally equal terms to all other customers competing in the distribution of such products or commodities.

(d) *Prohibited Discriminatory Services or Facilities.*—It is an unfair trade practice for any member of the industry engaged in commerce¹ to discriminate in favor of one purchaser against another purchaser or purchasers of a commodity bought for resale, with or without processing, by contracting to furnish or furnishing, or by contributing to the furnishing of, any services or facilities connected with the processing, handling, sale, or offering for sale of such commodity so purchased upon terms not accorded to all purchasers on proportionally equal terms.

(e) *Inducing or Receiving an Illegal Discrimination in Price.*—It is an unfair trade practice for any member of the industry engaged in commerce,¹ in the course of such commerce, knowingly to induce or receive a discrimination in price which is prohibited by the foregoing provisions of this Rule 19.

(f) *Purchases by Schools, Colleges, Universities, Public Libraries, Churches, Hospitals, and Charitable Institutions Not Operated for Profit.*—The foregoing provisions of this Rule 19 relate to practices within the purview of the Robinson-Patman Antidiscrimination Act, which Act and the application thereunder of this Rule 19 are subject to the limitations expressed in the amendment to such Robinson-Patman Antidiscrimination Act, which amendment was approved May 26, 1938, and reads as follows:

"Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That nothing in the Act approved June 19, 1936 (Public, Numbered 692, Seventy-fourth Congress, second session), known as the Robinson-Patman Antidiscrimination Act, shall apply to purchases of their supplies for their own use by schools, colleges, universities, public libraries, churches, hospitals, and charitable institutions not

¹ See footnote, p. 460.
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operated for profit." (52 Stat. 446; Supp. 4 U. S. C. Title 15, Sec. 13c.)

RULE 20. Discriminatory Returns.

It is an unfair trade practice for any member of the industry, engaged in commerce,¹ to discriminate in favor of one customer-purchaser against another customer-purchaser of industry products, bought from such member of the industry for resale, by contracting to furnish or furnishing in connection therewith, *upon terms not accorded to all customer-purchasers on proportionally equal terms*, the service or facility whereby such favored purchaser is accorded the privilege of returning industry products so purchased and receiving therefor credit or refund of purchase price; *provided, however*, nothing in any of the rules herein shall prohibit or be used to prevent the return of merchandise by purchaser, for credit or refund of purchase price, when and because such merchandise has not been properly labeled by the seller as to fiber content, or has been otherwise falsely or deceptively labeled or represented, or when and because such merchandise is defective in material, workmanship, or in any other respect contrary to warranty or purchase contract. (See also Rule A, Group II.)

RULE 21. Consignment Distribution.

It is an unfair trade practice for any member of the industry to employ the practice of shipping merchandise to dealers or distributors on consignment or pretended consignment for the purpose and with the effect of artificially clogging or closing trade outlets and unduly restricting competitors' use of said trade outlets in getting their products to consumers through regular channels of distribution, thereby injuring, destroying or preventing competition or tending to create a monopoly or to unreasonably restrain trade. Nothing in this rule shall be construed as restricting or preventing consignment shipping or marketing of industry products in good faith where suppression of competition, restraint of trade, or undue interference with competitors' use of the usual channels of distribution, is not effected.

SHRINKAGE PROVISIONS

RULE 22. Definitions Pertaining to Shrinkage Rules.

(a) The within rules relating to shrinkage apply to linen, part linen and purported linen products, namely, fiber, yarn, thread, strands, fabric, garments or articles containing or purporting to contain linen in whole or in part.

(b) As used in these rules the terms "additional shrinkage," "remaining shrinkage" or "residual shrinkage" applied to said linen.

¹ See footnote, p. 460.

part linen or purported linen products mean the shrinkage or shrinkage properties remaining in the product after the same has undergone a shrinkage process.

RULE 23. General Misbranding or Misrepresentation as to Shrinkage.

The practice of selling, offering for sale, advertising, describing, branding, marking or labeling linen, part linen or purported linen products in a manner which is calculated to mislead or deceive or has the capacity and tendency or effect of misleading or deceiving the purchasing or consuming public with respect to the preshrunk character of such products, the residual shrinkage remaining therein, or with respect to the extent of the shrinkage to which such products have been subjected, or respecting any other shrinkage properties, quality or character of such products, is an unfair trade practice.

RULE 24. Misuse of Specific Shrinkage Designations.

In the sale or distribution of linen, part linen or purported linen products, it is an unfair trade practice: (a) to use, or cause to be used, directly or indirectly, the terms "Full Shrunk," "Preshrunk," "Shrunk," "Shrinkproof," "Will Not Shrink," "Mill Shrunk," "Double Shrunk," "Non-Shrinkable," or word, term, mark, label or representation of like effect or similar import, as descriptive of such products when the same are not in fact shrinkproof or non-shrinkable, or have not in fact been fully shrunk or preshrunk to the extent that no residual shrinkage is left remaining in such products; or (b) otherwise to use, or cause to be used, any such word, term, mark, label or representation so as to mislead or deceive the purchasing or consuming public into the belief that such products have been shrunk to a greater degree than is in fact true or that the residual shrinkage of such products is less than is in fact true.

RULE 25. Designations Permissible When All Residual Shrinkage Has Been Removed.

Nothing in these rules shall prohibit the use of the term "Full Shrunk," "Preshrunk," "Shrunk," "Shrinkproof," "Non-Shrinkable," or word, term, mark, label or representation of like effect or similar import, as descriptive of linen, part linen or purported linen products which have undergone the application of a shrinking process and thereby have been shrunk or preshrunk to the extent that no residual shrinkage is left remaining in such products, and provided that subsequent to the application of such shrinking process the products have not been subjected to stretching or to any condition or process which has restored shrinking properties or residual shrinkage to such products.

RULE 26. Use of Terms "Preshrunk" or "Shrunk" with Qualifications.

(I) In the case of linen, part linen or purported linen products

which have undergone the application of a shrinking process and have been shrunk to a substantial extent but as to which there remains a certain amount of residual shrinkage, nothing in these rules shall prohibit the use of the term "Preshrunk," "Shrunk," or term or word of like effect or similar import, as an integral part of or in immediate conjunction with a truthful phrase, statement or assertion clearly and unequivocally stating the fact that such products have been preshrunk or shrunk to a substantial extent and also setting forth in percentage or percentages the amount of residual shrinkage remaining in both the warp and the filling, or in either the warp or the filling, whichever has the greater residual shrinkage. To avoid confusion, deception or misunderstanding, the standard shrinkage test provided for in paragraph (V) of this rule should be used in determining percentages to be specified in such designations. The following are typical examples of designations provided for in this rule:

- (a) "Preshrunk (or shrunk) — will not shrink more than%."
- (b) "Preshrunk (or shrunk)—additional shrinkage will not exceed%."
- (c) "Preshrunk (or shrunk)—additional shrinkage will not exceed warp%, filling%."
- (d) "These products have been shrunk (or preshrunk) to the extent that additional shrinkage will not exceed% when tested in accordance with the recognized and approved standards or tests."
- (e) "Preshrunk (or shrunk)—remaining shrinkage 2%."
- (f) "Preshrunk (or shrunk)—additional shrinkage not more than%."
- (g) "Will not shrink more than%."
- (h) "Shrinkage will not exceed%."

(II) The residual, additional or remaining shrinkage percentage designations provided for in these rules for linen, part linen or purported linen products should be stamped on or otherwise firmly affixed to the material in conspicuous size and legibility of type or style, in immediate conjunction with the designation or representation regarding shrinkage, and should also appear similarly on all invoices, labels, marks or advertisements which carry reference to the shrinkage of the products.

(III) The use of residual, additional or remaining shrinkage percentage designations not in conformity with results obtainable under the test specified in paragraph (V) of this rule, with the capacity and tendency or effect of misleading or deceiving the purchasing or consuming public, is an unfair trade practice.

(IV) The use or specification of an unreliable or inadequate test in

any such designations, or the refusal to specify a test which is proper and applicable, when done for the purpose or with the capacity and tendency or effect of directly or indirectly misleading or deceiving the purchasing or consuming public, is an unfair trade practice.

(V) The following test is deemed to be an accepted and recognized test for determining shrinkage properties or residual shrinkage of linen, part linen or purported linen products in the application of these rules and is recommended for use as a standard shrinkage test for this purpose:

"Commercial Standard CS 59-39."

GROUP II*

RULE A. *Return of Merchandise.*

The practice, by members of the industry, of selling merchandise and later permitting the purchaser to return it for credit or refund of purchase price, without just cause, creates waste and loss, increases the cost of doing business, operates both to the detriment of the industry and the public, and is condemned by the industry, subject, however, to requirements and limitations set forth in the provisions of Rule 20 of Group I, herein, and subject also to the general limitation that members of the industry shall not engage in any combination or conspiracy in restraint of trade or use any other illegal methods in the regulation, control or prevention of the return of merchandise. Where goods are properly labeled and no just cause for their return exists, the practice of returning such merchandise after it has been held by the purchaser in his stock or place of business for more than ten days is condemned by the industry.

RULE B. *Disclosure of Proportions of Constituent Fibers in Mixed Goods.*

The practice of making full and accurate disclosure of the proportions or percentages of the constituent fibers in mixed goods is approved as a proper practice to the end that salespersons, dealers and other marketers of such products may have accurate information of the fiber content thereof and may in turn correctly inform the purchasing and consuming public, thereby avoiding confusion, misunderstanding or misrepresentation as to the nature or content of such products. Any action taken in following this rule should be consonant with the requirements of the foregoing Group I rules.

RULE C. *Information as to Treatment and Care of Products.*

The practice, by producers, manufacturers and distributors, of furnishing and disseminating, through tags, labels, advertisements or other publicity, accurate information as to the proper treatment, care

* See page VIII for headnote applicable to Group II Rules.

and cleaning of the products covered by these rules, is approved and recommended as a desirable practice to follow in the interest of enabling consumers to obtain and enjoy full benefit of the desirable qualities and services of such products.

Promulgated by the Federal Trade Commission February 1, 1941.

APPENDIX I TO LINEN RULES

Existing provisions of the Silk Rules promulgated by the Federal Trade Commission November 4, 1938, respecting disclosure of weighted silk, as referred to at page 302, herein, are as follows:

RULE 4. *Weighted Silk.*

(a) Full and nondeceptive disclosure of the presence of metallic weighting, together with the proportion or percentage thereof, in any silk or silk product of any kind, shall be made in labels, tags or brands attached to the merchandise, and in the invoices, and in whatever advertising matter, sales promotional descriptions or representations may be used in respect thereto however disseminated or published, to the end that misrepresentation of the merchandise or deception of the purchasing or consuming public may be avoided and prevented; and it is an unfair trade practice (1) to fail or refuse to make such full and nondeceptive disclosure through the means stated and in conformity with the requirements of this rule; or (2) otherwise to deceptively conceal the presence of such metallic weighting or the percentage or proportion thereof.

(b) The percentage or proportion of such metallic weighting to be disclosed under this rule shall be that proportion or percentage which the total weight of such metallic substance bears to the total weight of the silk in its finished state; subject, however, to the allowance of a tolerance of five points' variation from such stated percentage or proportion to the extent the variation is due to unavoidable variations in processing and not to lack of reasonable effort to state the percentage or proportion accurately. The following are illustrative examples of the disclosure provided for in this rule:

"Silk, Weighted 25%"

or

"Silk with 25% Metallic Weighting"

or

"Silk (weighted 25%) and Rayon."

(c) Nothing in this rule, however, shall be construed as prohibiting

the making of such disclosure as to weighting and the percentage thereof by truthfully and nondeceptively disclosing that the weighting is not over a certain percentage, or that the weighting in such parts of the product as consist of weighted silk ranges from a certain minimum to a certain maximum figure, such as, for example:

"Silk, Weighted up to 50%"

"Silk, Weighted not over 50%"

"Silk, Weighted between 25% and 50%"

"Silk with 25% to 50% Weighting"

"Silk, Weighted from 25% to 50%."

(d) In making disclosure under these rules as to weighting, the disclosure of the fact that the product, or respective part thereof, is weighted and of the percentage or proportion of weighting, shall be made plainly and unequivocally, also in immediate conjunction with such representations of content as are used, and shall not be set forth in such manner as to be misleadingly or deceptively minimized, obscured, remotely placed or rendered inconspicuous.

(e) In case any such product so weighted with metallic substance is silk noil, the fact that such is noil shall also be disclosed in accordance with the requirements of Rule 2 and in addition to said disclosure as to weighting materials—such as, for example:

"Silk Noil, Weighted 25%,"

"Noil Silk with 25% Weighting."

APPENDIX II TO LINEN RULES

Existing provisions of the Silk Rules promulgated by the Federal Trade Commission November 4, 1938, respecting disclosure of noil silk, as referred to at page 302, herein, are as follows:

RULE 2. *Silk Noil.*

(a) Silk Noil is waste silk produced in the operations incident to manufacture of spun silk. The term "silk noil" as used in these rules, however, shall not be construed as including spun silk, except to the extent such spun silk is made of silk noil. For purposes of making disclosure, under these rules, as to content of product, such silk noil may be designated as "Silk Noil," "Noil Silk," "Silk Waste" or "Waste Silk."

(b) In offering for sale, selling or distributing, or promoting the sale or distribution of, any fiber, yarn, thread, strands, fabric, or garment or other product, containing silk noil either in whole or in part, full and nondeceptive disclosure of the presence of such silk noil should be made in labels, tags or brands affixed to the merchandise, and in the invoices, and in such advertising matter, sales promotional

descriptions or representations as may be used in respect thereof however disseminated or published; and it is an unfair trade practice to deceptively conceal the presence of such silk noil or to fail or refuse to make said disclosure, having the capacity and tendency or effect of thereby misleading or deceiving the purchasing or consuming public. In the use of the term "silk noil," "noil silk," "silk waste" or "waste silk," the word "noil" and "waste" shall not be misleadingly or deceptively minimized, obscured, remotely placed or rendered inconspicuous.

TRADE PRACTICE RULES

FOR THE

HOSIERY INDUSTRY

PROMULGATED MAY 15, 1941

STATEMENT BY THE COMMISSION

Trade practice rules for the Hosiery Industry, as hereinafter set forth, are promulgated by the Federal Trade Commission under its trade practice conference procedure.

The rules relate to the sale and distribution, by manufacturers, importers, jobbers, distributors, dealers or others, of hosiery for men, women and children and related products of the Hosiery Industry. The rules are directed to the elimination and prevention of various deceptive practices and unfair competitive methods, and are issued in the interest of affording the industry and trade, and the buying public, more adequate protection from such harmful methods or practices. To this end, provisions are included for the proper marking of hosiery. With reference to the products of the industry which are subject to the Wool Products Labeling Act of 1939, provision is made for having the marking or labeling follow the requirements of that Act and the rules and regulations thereunder while in effect and to the extent applicable.

According to the latest available figures, the yearly retail sales value of the industry's production of hosiery is estimated at approximately \$585,000,000. In 1940 the manufacturers marketed in excess of 136,000,000 dozens of pairs. Manufacturing plants in the industry number slightly more than a thousand and employ above 154,000 persons, exclusive of salesmen.

The proceeding for the establishment of trade practice rules was instituted upon application from the industry. In the course thereof a general trade practice conference was held, under the auspices of the Commission, in Philadelphia, Pennsylvania. At such conference proposed rules were considered and were thereupon submitted on behalf of the industry to the Commission for its consideration. Following preliminary study and necessary revision, a complete draft of proposed rules in appropriate form was made available to all interested or affected parties upon public notice whereby they were afforded opportunity to present their views to the Commission, including such pertinent information, suggestions or objections as they desired to submit, and to be heard in the premises. Accordingly, public hearing pursuant to such notice was held in Washington, D. C., and all matters there presented, or otherwise submitted, were duly received and considered.

Upon consideration of the entire matter final action has been taken by the Commission, whereby it has approved and received, respectively, the rules hereinafter appearing in Group I and Group II.

Such adjustment as may be necessary on the part of members of the industry to bring their labeling practices into harmony with these rules shall be made as promptly as possible and not later than July 15, 1941. This shall not, however, be construed as permitting of the use meanwhile of any existing or other labels, marks or practices which are false, misleading or deceptive, or which are otherwise contrary to law.

Said trade practice rules for the Hosiery Industry, as promulgated by the Commission, are as follows:

THE RULES

GROUP I*

The unfair trade practices embraced in these Group I rules are considered to be unfair methods of competition, unfair or deceptive acts or practices, or other illegal practices, prohibited by acts of Congress administered by the Federal Trade Commission; and appropriate proceedings in the public interest will be taken by the Commission to prevent the use, by any person, partnership, corporation, or other organization, of such unlawful practices in commerce.

Such provisions of the rules express requirements which are applicable to all manufacturers, importers, jobbers, distributors, dealers, or other marketers of the products of the industry. Each has the definite responsibility of seeing to it that the merchandise as advertised, or as introduced into or sold by him in the channels of trade or commerce, is properly labeled and represented in keeping with the requirements of such Group I rules.

RULE 1. *Scope of Rules—Imports and Exports.*

(a) Except where otherwise required by law, these rules shall apply to all hosiery produced in the United States or offered for sale, sold or distributed in the American market.

(b) *Imports.*—Imported hosiery is subject to these rules (and the marking requirements herein specified) the same as domestic hosiery, irrespective of whether the hosiery was originally manufactured in the United States and exported and thereafter imported; or whether it was manufactured in a foreign country and imported from such foreign country or another country into the United States; or whether the hosiery, foreign or domestic, was introduced into the American market in any other way.

* See page VIII for headnote applicable to Group I Rules.

(c) *Exports.*—Hosiery produced in the United States for export to a foreign country need not be marked in accordance with the requirements of these rules, except

(I) where such hosiery, although intended for export, or actually exported, is subsequently offered for sale or sold for use, consumption or resale within the United States or place subject to its jurisdiction; or

(II) where such hosiery manufactured in the United States for export, or sold for export, is marked, sold or exported in such manner or under such conditions as to involve fraud or deception, or an unfair method of competition against an American competitor engaged in export trade, or a matter otherwise contrary to the public policy of the United States; or

(III) where required by the Wool Products Labeling Act of 1939 or by other provisions of law.

RULE 2. *Definitions.*

For the purpose of these rules and in making disclosure of fiber content of hosiery as hereinafter provided for, the following definitions shall apply:

(a) The terms "hosiery" and "hose" mean hosiery for men, women and children, including all types and kinds of hose, stockings, socks, anklets, and other related products of the hosiery industry.

(b) The term "fiber content" means the fiber or fibers of which the yarn, thread, strands, fabric or fibrous product contained in the hosiery, or part thereof referred to, is made, whether of silk, wool, reprocessed wool, reused wool, rayon, cotton or linen, or any animal, vegetable, organic, inorganic, chemical, or other natural or man-made fiber, or the mixture of two or more of these.

(c) The term "silk" means the natural fiber derived from the cocoon of the silkworm, and the yarn, thread, strands, fabric or product of such natural fiber. (See Rules 7 and 8 for definitions and requirements as to pure silk, silk noil, weighted silk.)

(d) The terms "wool," "reprocessed wool," and "reused wool" hereunder shall have the same meaning as that applied to such terms by and in pursuance of the Wool Products Labeling Act of 1939.

(e) The word "rayon" is the generic term for manufactured textile fiber produced chemically from cellulose or with a cellulose base and for yarn, thread, strands or fabric made therefrom, regardless of whether such fiber or product be made under the viscose, acetate, cuprammonium, nitrocellulose, or other process.

(f) The term "cotton" means the fiber from or consisting of the seed hairs of the cotton plant in their natural form, and the yarn, thread, strands or fabric made thereof.

(g) The word "linen" or "flax" is the generic term for the fiber of the flax plant and for yarn, thread, strands or fabric made of such fiber of the flax plant.

(h) "Superimposed decoration" means:

(I) Any decorative design or other decoration consisting of one or more threads which in the knitting of the hosiery is superimposed upon the structural fabric of such hosiery by a knitting operation; and

(II) Any decorative design or other decoration embroidered onto the fabric either by hand or by machine after the knitting operation has been completed.

(i) The term "bundle goods" means work socks, skating and ski socks, and other heavy socks, weighing not less than one pound per dozen pairs and packed in bundles and sold therein through the channels of trade and to the consuming public.

RULE 3. "Lisle Cotton" or "Cotton Lisle."

(a) It is an unfair trade practice to use the term "lisle cotton" or "cotton lisle," or words, terms or representations of similar import, as descriptive of hosiery, or any part thereof, when the yarn of such hosiery or part thereof so described is not composed of cotton lisle or when said description or representation is otherwise false, misleading or deceptive. For purposes of meeting the foregoing requirements of this rule and to avoid confusion, misunderstanding and deception of the public, cotton lisle as used in hosiery is defined as two or more ply yarn of combed long staple cotton, the ply twist of which is not less than the turns per inch indicated in the following table:

Count	2-Ply		3-Ply		4-Ply	
	Minimum Twist	Approximate Twist Multiplier	Minimum Twist	Approximate Twist Multiplier	Minimum Twist	Approximate Twist Multiplier
30	16	4¼	13	4½	11	4
40	19	4¼	15	4½	13	4
50	21	4¼	17	4½	14	4
60	23	4¼	18	4½	15	4
70	25	4¼	20	4½	17	4
80	27	4¼	21	4½	18	4
90	28	4¼	23	4½	19	4
100	29	4¼	24	4½	20	4
120	31	4¼	26	4½	22	4
140 & higher	33	4¼	28	4½	24	4

(NOTE.—The minimum twist of intermediate counts not given should be in proportion to those given in the table. The average results of tests for number of turns of twist in a yarn shall be reported to the nearest whole number.

Yarns having more than 4 plies shall have not less than the number of turns given for the 4-Ply yarn, minus 1 turn for each additional ply above 4; that is, for each additional ply above 4, 1 turn per inch may be deducted from the minimum number of turns given for the 4-Ply yarn.)

(b) The term "long staple cotton" as used in this rule is understood to mean cotton which is not less than 1½" in length of staple; provided, however, that nothing in this rule shall be construed as prohibiting the use of cotton which is not less than 1¼" in length of staple for the counts of 35 and less above referred to.

(c) Nothing in this rule shall be construed as prohibiting the use of the term "lisle" to refer to hosiery or designated part thereof which is composed of cotton lisle meeting the foregoing requirements of this rule, provided such hosiery bears at least one clear and conspicuous mark definitely showing that such hosiery or designated part thereof is cotton, as for example, "Cotton Lisle," "All Cotton," "Lisle Body Made of Cotton," etc.; and provided further, no deception is practiced in respect to the fiber content of such hosiery.

RULE 4. Combed or Carded Yarn or Fiber.

It is an unfair trade practice (a) to cause any hosiery to be sold or distributed under marks, labels, advertisements, representations or selling methods which have the capacity and tendency or effect of misleading or deceiving the purchasing or consuming public into the belief that the yarn or fiber in such hosiery is combed yarn or fiber when such is not the fact, or that the yarn or fiber is carded yarn or fiber when such is not the fact; or (b) to promote the sale or distribution of hosiery under any other misrepresentations or deceptive selling methods concerning the combed or carded condition of the yarn or fiber in such hosiery.

RULE 5. "Crepe."

(a) It is an unfair trade practice to use the word "crepe" or word, term or representation of similar import, as descriptive of hosiery, or any part thereof, when the hosiery or part thereof so described is not in fact crepe or when said description or representation is otherwise false, misleading or deceptive. For purposes of meeting the foregoing requirements of this rule and to avoid confusion, misunderstanding and deception of the public, "crepe" is defined in respect to hosiery as silk yarn in which the total of turns in both the initial and final twists is at least:

100 turns per inch for two-thread
80 turns per inch for three-thread

60 turns per inch for four-thread

50 turns per inch for five-thread and over.

At least 50% of these minimum twist requirements must be in the initial twist, which may be either right or left, or both.¹

(b) Nothing in this rule shall be construed as prohibiting the use of the word "crepe" as descriptive of other fiber made of a construction having the above described minimum twist requirements, provided such word "crepe" is clearly and nondeceptively qualified, in immediate conjunction therewith, by the name of the fiber or fibers comprising the product referred to, set forth in the order of their predominance by weight; such as, for example: "Rayon and Silk Crepe" or "Cotton and Silk Crepe," each fiber named being present in substantial proportion. This paragraph shall not be construed as relieving anyone of the necessity of meeting the requirements of other rules as to designation and disclosure of fiber content.

RULE 6. "Ringless."

It is an unfair trade practice, in offering for sale, selling, describing, branding, labeling, advertising, representing or promoting the sale or distribution of hosiery, to use the term "ringless" as descriptive of silk or silk-bodied hosiery when it has not been manufactured by the so-called "ringless" method or process of hosiery manufacture and is not in fact without "rings" in the fabric, or deceptively to use such term "ringless" as descriptive of any other hosiery which is not without rings in the fabric.

(NOTE.—In the "ringless" method or process of hosiery manufacture referred to in this rule, no two courses of any three consecutive courses are knit from the same cone of yarn.)

RULE 7. Pure Silk.

(a) It is an unfair trade practice to use the term or phrase "Pure Silk," "All Silk," "Pure Dye Silk," or the distinctive term or phrase "Pure Dye" or the unqualified word "Silk," or any other word, term, phrase, designation or representation of similar import, as descriptive of any hosiery, or yarn, thread, strands or fabric therein, (1) the fiber content of which is not silk exclusively; or (2) which contains

¹ The following are illustrative examples of the above minimum twist requirements:

Two-thread . . .	1-50 } 50	1-25 } 50	1-35 } 30	1-40 } 20
	1-0 }	1-25 }	1-35 }	1-40 }
Three-thread . .	1-45 } 35	1-15 } 35	1-30 } 20	
	1-0 }	1-15 }	1-30 }	
	1-0 }	1-15 }	1-0 }	
Four-thread . . .	1-9 } 24	1-16 } 23	1-30 } 30	
	1-9 }	1-16 }	1-0 }	
	1-9 }	1-0 }	1-0 }	
	1-9 }	1-0 }	1-0 }	

any metallic weighting whatsoever; or (3) which contains any loading or adulterating materials, or other foreign or added substance or material (except the necessary dyeing and/or finishing materials required to produce the color and finish of the product). Such necessary dyeing and/or finishing materials shall, however, in no case exceed 10% in the aggregate, except black, which shall not exceed 15% in the aggregate. These percentages shall be computed upon the weight of the silk in its finished state.² Nothing in this rule shall be construed as permitting the use of dyeing or finishing materials, either within or in excess of such 10% and 15% limits, for the purpose or with the result of thereby deceptively loading the product with excess or unnecessary dyeing or finishing materials.

(b) *Silk Noil*.—For purposes of these rules silk noil is defined as waste silk produced in the operations incident to the manufacture of spun silk. In specifically naming such fiber when making disclosure of fiber content of hosiery under these rules, the disclosure shall show that such fiber is noil silk or waste silk, as for example, "Noil Silk," "Silk Noil," "Waste Silk," "Silk Waste."

RULE 8. Weighted Silk.

(a) Full and nondeceptive disclosure of the presence of metallic weighting in hosiery, together with the proportion or percentage thereof, shall be made in immediate conjunction with the name of the fiber, by transfer, stamp, mark, label, rider ticket or tag attached to the product, and in invoices, price lists, catalogues, and whatever advertising and sales promotional descriptions or representations thereof may be used, however disseminated or published, to the end that misrepresentation of the merchandise or deception of the purchasing or consuming public may be avoided and prevented; and it is an unfair trade practice (1) to fail or refuse to make such full and nondeceptive disclosure through the means stated and in conformity with the requirements of this rule; or (2) otherwise to deceptively conceal the presence of such metallic weighting or the percentage or proportion thereof.

(b) The percentage or proportion of such metallic weighting to be disclosed under this rule shall be that proportion or percentage which the total weight of such metallic substance bears to the total weight of the silk in its finished state;² subject, however, to the allowance of a tolerance of five points' variation from such stated percentage or proportion to the extent the variation is due to unavoidable variations in processing and not to lack of reasonable effort to state the percentage or proportion accurately. The following are illustrative examples of the disclosure provided for in this rule with respect to such weighted silk contained in the hosiery:

² It is deemed proper practice to make these computations on the basis of standard atmospheric conditions (relative humidity 65 per cent—temperature 70 degrees Fahrenheit).

When the hose is composed throughout of silk with 25% weighting:

"Silk, Weighted 25%"
or
"Silk with 25% Metallic Weighting"
or
"Silk, Weighted up to 25%."

When the body of the hose is composed wholly of silk with 25% weighting:

"Silk Body, Weighted 25%"
or
"Silk Body with 25% Metallic Weighting"
or
"Silk Body, Weighted up to 25%."

When the hose is composed throughout of silk and rayon, each present in substantial proportion, the predominant fiber, however, being silk containing 25% metallic weighting:

"Silk (Weighted 25%) and Rayon."

(c) Nothing in this rule, however, shall be construed as prohibiting the making of such disclosure as to weighting and the percentage thereof by truthfully and nondeceptively disclosing that the weighting is not over a certain percentage, or that the weighting in such parts of the product as consist of weighted silk ranges from a certain minimum to a certain maximum figure, such as, for example:

"Silk, Weighted up to 50%"
"Silk, Weighted Not Over 50%"
"Silk, Weighted Between 25% and 50%"
"Silk with 25% to 50% Weighting"
"Silk, Weighted from 25% to 50%."

(d) In case any such product so weighted with metallic substance is silk noil, the fact that such is silk noil shall also be disclosed in addition to said disclosure as to weighting materials, as for example:

"Silk Noil, Weighted 25%"
"Noil Silk with 25% Weighting."

Silk noil is defined, for purposes of these rules, as waste silk produced in the operations incident to the manufacture of spun silk, as provided in Rule 7 (b).

(e) The designation of weighting and percentage thereof provided for in the foregoing paragraphs of this Rule 8 shall be made in immediate conjunction with the name of the fiber and shall be such as

fully meets the requirements of Rule 13 against deceptive set-up or arrangement.

RULE 9. *Disclosure and Description of Fiber Content.*

(For special provision regarding woolen hosiery, see paragraph (q) of this rule.)

In the sale or distribution of hosiery, whether composed of but one fiber or of two or more fibers, full and nondeceptive disclosure of the fiber content of the hosiery shall be made in accordance with the provisions hereinafter set forth in this rule, to the end that the purchasing and consuming public may be correctly informed as to the content of such hosiery and that thereby deceptive concealment and misrepresentation in respect thereto, and other unfair methods of competition, or unfair or deceptive acts or practices, in the marketing of such hosiery in the channels of trade and to the consuming public, may be avoided and prevented. It is an unfair trade practice to conceal the presence of any fiber constituent of such hosiery or to fail or refuse to make said disclosure of such fiber content in accordance with the following subsections of this rule, such concealment or non-disclosure having the capacity and tendency or effect of misleading or deceiving the purchasing or consuming public.

(a) *Naming of Fibers in Order of Predominance.*—In making the required disclosure of fiber content under this rule, the respective fiber or fibers of which the hosiery is composed shall be designated and set forth; and where the hosiery is composed of two or more fiber constituents, the name and designation of each fiber shall be set forth in the order of its predominance by weight, beginning with the largest single constituent, such as, for example,

"Rayon and Silk"
or
"Cotton and Silk"
or
"Rayon, Cotton, and Silk,"

subject, however, to the permissive variations and other provisions hereinafter set forth in the subsections of this Rule 9. (See paragraph (l) below for provision as to exclusion of seaming and looping threads, rubber elastic threads, and webbing.)

(b) *Disclosure by Transfer, Mark, Stamp, Rider Ticket, Label or Tag.*—Said disclosure of fiber content shall be made on at least one stocking of each pair, by the use of either a transfer, mark, stamp, rider ticket, label or tag clearly and nondeceptively setting forth the fiber content of the hosiery, attached and done in such manner as to carry through the ordinary channels of trade to the ultimate consumer and be appropriate in the sale or resale of the article to the purchasing

and consuming public, thereby rendering further or additional labeling as to fiber content unnecessary so long as the proper transfer, mark, stamp, rider ticket, label or tag affixed by the manufacturer, importer, or other first seller remains on the article and the fiber content of the product has not been changed. This shall not, however, be construed as relieving dealers or other vendors of any of their responsibility of seeing to it that the hosiery as sold by them bears a proper and appropriate transfer, mark, stamp, rider ticket, label or tag disclosing the information required by these rules and is not falsely or deceptively labeled nor otherwise marked, advertised, represented or offered for sale in a manner contrary to the provisions of these rules. (See paragraphs (c) and (p), respectively, below for provisions as to marking hosiery sold in sealed containers and as to marking bundle goods.)

(c) *Marking Sealed Containers.*—In respect of hosiery which is packed and marketed in sealed containers of one pair each, the marking required by these rules may be placed upon such container in lieu of being affixed directly to the hose, provided such container, with the hose therein, remains intact and unbroken until after delivery to the ultimate consumer, and provided further that such marking of the container involves no deceptive or misleading tendencies or effects and is fully adequate to inform purchasers and consumers of the required information. (This provision shall not be construed as relieving anyone of the necessity of properly marking the hose itself if by reason of the type of container or otherwise the hose is likely to be removed from such container before sale to the ultimate consumer.)

(d) *Disclosure in Catalogues, Sales Literature, Price Lists, Etc.*—Said disclosure of fiber content shall also be made in whatever catalogues, price lists and sales promotional literature descriptive of the product are used in selling or promoting the sale of the hosiery. Nothing in these rules shall be construed as relieving anyone of the necessity of making such other and further disclosure as to fiber content in sales documents passing from seller to purchaser as may be necessary to avoid and prevent the sale or resale of the hosiery under deceptive, misleading or unfair practices.

(e) *Disclosure in Other Advertising Media.*—Nothing in these rules shall be construed as relieving anyone of the necessity of making said disclosure of fiber content in magazine, newspaper or other advertising matter in instances where such is required by existing trade practice rules or where it is otherwise necessary in order to avoid deceptive, misleading or unfair practices.

(f) *Disclosure of Fiber Content in Invoices.*—In respect to disclosure of fiber content in invoices, if because of a multiplicity of items of different fiber composition it is not feasible to have the fiber content

of the different numbers or items set out on the face or back of the invoice or otherwise specifically listed therein, a statement in lieu of such specific listing of fiber content in the invoice may be set forth in such invoice to the effect that the seller warrants that each and every item coming under these rules and covered by such invoice is properly marked and labeled as to content in full conformity with the provisions of these rules, *provided* such products are so labeled and marked properly, and *provided further*, no false or misleading designations or representations are used, nor any other deception, direct or indirect, is practiced in or by means of such invoice. The following is an example of the above-mentioned warranty statement to be set out on invoices under the provisions of this paragraph:

"The seller hereby warrants that the fiber content of the products covered by this invoice are clearly and truthfully disclosed and marked in tags, labels or brands attached to the respective products, in accordance with the provisions of the trade practice rules for the Hosiery Industry."

(NOTE.—In respect of hosiery subject to the Wool Products Labeling Act of 1939, such warranty statement on the invoice may be in the form of the separate guaranty provided for by said Act and the rules and regulations thereunder.)

(g) *Generic Names and Qualifications Thereof.*—In designating fibers under these rules, the common generic name of each specifically named fiber shall be used and shall be qualified by such adjectives as to kind or character of the respectively named fiber as may be provided for in any of these trade practice rules or as may otherwise be required by law or be necessary for the avoidance of deception or unfair methods or practices. Such terms as "Durene," "Mercerized," "Acetate," "Bemberg," shall not be used as, or in lieu of, the common generic name of the fiber referred to but shall be accompanied by such common generic name as, for example, "Durene Cotton," "Mercerized Cotton," "Acetate Rayon," "Bemberg Rayon." Neither shall any such term or other term, designation or representation be used when not wholly truthful and free from deceptive or misleading tendencies or effects.

(h) *Use of "Rayon" as Generic Term.*—In designating rayon fiber present in the hosiery, either in whole or in part, the term "rayon" shall be used as the generic name of such fiber, regardless of whether it be made by the acetate, viscose, cuprammonium, nitrocellulose, or other process; *provided, however*, that nothing in this rule shall be construed as prohibiting the proper qualification of such word "rayon" by an adjective or other qualifying term or phrase which nondeceptively indicates the process by which such rayon was produced or the particular brand name of such rayon, such as, for example, "Acetate Rayon," "Celanese Rayon," etc.

(i) *Disclosure of Percentages.*—In making disclosure of fiber content of hosiery, the percentage of each specifically named fiber shall also be fully and nondeceptively disclosed in each of the following circumstances:

(I) Where such specifically named fiber is present in an amount not exceeding 5% by weight of the whole hose, the percentage must also be given, as for example, "5% Silk;" "4% Rayon." (Where fiber comprising such small amounts is not specifically named, the provisions of paragraph (k) of this Rule 9 may be followed.)

(II) Where the omission or failure to disclose the percentage of any fiber or fibers has the capacity and tendency or effect of causing the purchasing or consuming public to be misled or deceived, the percentages of such fibers shall likewise be stated, to avoid such deceptive or misleading results.

(III) Where percentages are otherwise required by law to be stated.

(NOTE.—While the foregoing subdivisions of paragraph (i) of this Rule 9 may not necessarily require the disclosure of percentages in all hosiery, it is nevertheless deemed proper and desirable—(in the interest of promoting fair methods of competition and the protection of the purchasing and consuming public from confusion, deception, and unfair practices)—that the percentage of each specifically named fiber present be given in all instances where the hosiery is composed of two or more fibers, such as, for example:

"50% Rayon
25% Silk
25% Cotton"

"70% Rayon
30% Silk"

"60% Silk
40% Cotton.")

(j) *Tolerances for Calculating Percentages Provided for in Paragraph (i).*—For purposes of determining the percentages provided for in the foregoing paragraph (i) of this Rule 9, a tolerance of not exceeding 3% shall be allowed where such tolerance is necessary due to unavoidable variations or due to the infeasibility of more accurately calculating the percentages of the different fibers present. In cases, however, where representations are made to the effect that hosiery contains certain fiber or fibers in not less than, or in not more than, a certain amount or percentage, no tolerance shall be allowed. In cases where representations are made to the effect that hosiery is composed wholly of but one fiber, no tolerance shall be allowed for any other fiber or fibers which have been added in making up the fiber composition of the yarn, fabric, or product.

(k) *Five Per Cent Miscellaneous Fibers—Use of Terms "Other Fibers" and "Miscellaneous Fibers."*—In making disclosure of fiber content, the term "Other Fibers," "Miscellaneous Fibers," or "Misc. Fibers" may be used to designate miscellaneous fibers which are present in the hosiery in an aggregate amount not exceeding 5% by weight of the entire hose, provided the remaining fiber constituents of the hose are fully and nondeceptively disclosed in accordance with the hereinabove stated provisions of this Rule 9, as for example, "Silk and Other Fibers," "Rayon and Miscellaneous Fibers." However, such miscellaneous fibers which are present in an aggregate amount not exceeding 5% need not be mentioned at all where a minimum of 95% of the entire fiber content of the hose is fully and nondeceptively disclosed by stating, in the order of predominance by weight, the name and percentage of each respective fiber constituting such 95%, as for example, "95% Rayon" or "55% Rayon, 40% Silk;" *provided*, that no deception is practiced in respect of such omission.

(l) *Seaming or Looping Threads, Rubber Elastic Threads, and Webbing of Superimposed Garter.*—In making disclosure of the fiber content of hosiery under this Rule 9, necessary seaming and looping threads, rubber elastic threads, and webbing constituting part of a superimposed garter, may be omitted, unless deceptive or unfair practices are involved in such omission or unless some representation is made as to the composition, kind or character of such threads or webbing, in which event full and nondeceptive disclosure of the fiber content of the threads or webbing referred to shall be made as required in the case of other parts of the hose and such other steps shall be taken as may be necessary to avoid deceptive or unfair practices and to prevent the purchasing or consuming public from being misled or deceived.

(m) *Decorations—Clocks, Stripes, Etc.*—The fiber content of decorations such as clocks, stripes, etc., whether superimposed on the hosiery or knitted into the fabric of the hose as an integral part thereof, shall be disclosed,

(I) either by including the same as part of the disclosure of fiber content of the hose to be set forth under the foregoing provisions of this rule;

(II) or by specifically naming the fiber content of such clocks, stripes, or other decorations, as for example, "Silk Clock," "Rayon Stripe," etc., such designation to be set forth clearly and nondeceptively in immediate conjunction with the statement of fiber content of the other parts of the hose.

Exception as to 5% Superimposed Decoration.—In the case, however, where such decorations are superimposed decorations and comprise only a small amount of fiber not exceeding 5% of the

entire fiber content of the hose and no deception in respect thereto is practiced, the fiber content of such decoration need not be stated unless some representation is made as to the character, nature, content or properties of such decoration, in which event the fiber content thereof shall be truthfully and nondeceptively set forth in accordance with the foregoing provisions of this paragraph (m) and such other steps shall be taken as may be necessary to avoid deceptive or unfair practices. Likewise if, by use of the word "all" or of percentages which total 100%, or by other means, the fiber content of the hose is described in such manner as to represent or directly imply that it comprises the entire fiber content of the hose including such superimposed decoration, then the foregoing exception as to 5% superimposed decoration shall not apply, but the stated fiber content shall either truthfully include such superimposed decoration, or there shall be added a statement that the designated fiber content is exclusive of such superimposed decoration; as for example:

"All Silk
Exclusive of Decorations"
or
"100% Silk
Except Clocking."

(n) *Disclosure by Sections of Hosiery.*—In instances where the several sections of the hosiery are of different fiber composition, the fiber content of the hosiery may be disclosed under this rule by giving the respective fiber content of each section as it exists within the section, stating the fibers within each such section in their order of predominance by weight, beginning with the largest single constituent within the section. If any fiber so named is not present in the section to the extent of at least 5% of the section by weight, the percentage thereof shall also be given and such other steps shall be taken as may be necessary to prevent deception or unfair practices in respect of such fiber or section. The same limitations shall apply to disclosure by sections under this paragraph as are applicable in cases where disclosure of fiber content is made on the basis of the article as a whole. In making disclosure by sections of the hose under this paragraph, the respective sections to which the several designations apply shall be plainly indicated in such manner as not to be misleading or deceptive; and types of designations which purport to be applicable to sections or parts of the hose to which they are not truthfully applicable shall be avoided. The following are recognized as appropriate sections of hosiery for purposes of making said disclosure of fiber content by sections:

(I) "Body" or "Leg" (Includes leg and instep and is that

section of a stocking which starts immediately below the top, welt, or cuff and extends through the length of the stocking, exclusive of the heel, toe, and sole).

(II) "Top" or "Welt" (Includes welt and shadow welt, if any).

(III) "Foot" or "Heel, Toe, and Sole."

(o) *Tolerances for Determining Predominance by Weight.*—Provided no false, deceptive or unfair practices ensue, the order of predominance by weight of the respective fibers present in a specific style of hosiery made in the full range of sizes may be based on the respective weights of the fibers in the following average size in such style:

Women's hosiery	Size 9½
Misses' hosiery	Size 9
Men's hosiery	Size 11
Boys' half-hose and anklets.....	Size 9
Boys' golf hosiery	Size 10
Children's hosiery	Size 8
Infants' hosiery	Size 5

(p) *Marking of Bundle Goods.*—Any bundle goods, which by reason of the nature of their fabric cannot take a transfer of stamp, may be marked under these rules by rider ticket or label firmly attached to each pair of the hosiery in the bundle. Where, however, it is not feasible to use either transfer, stamp, or rider ticket, the information required to be disclosed may be set forth on an insert placed in one stocking of each pair, such insert to be of such form and character as will remain with the hosiery through the channels of trade until received by the ultimate consumer-purchaser. No insert shall be used in lieu of transfer, stamp, or rider ticket, or otherwise, for the purpose or with the result of thereby aiding dealers, resellers or vendors to remove the disclosure required by these rules and prevent such information from reaching purchasers or consumers. (For definition of bundle goods, see paragraph (i) of Rule 2.)

(q) *Hosiery Subject to Wool Products Labeling Act.*—Notwithstanding any of the provisions of these rules, hosiery which contains, or purports to contain, wool, reprocessed wool or reused wool shall be marked in accordance with the requirements of the Wool Products Labeling Act of 1939 and the rules and regulations thereunder when such shall have become effective. This provision, however, shall not be deemed to relieve anyone of the necessity of complying with such provisions herein set forth as relate to matters not covered by such Wool Products Labeling Act of 1939 or the rules and regulations issued under such Act. Nor shall any of the provisions herein set forth be construed as altering or limiting the requirements of said

Wool Products Labeling Act or of the rules or regulations issued thereunder.

RULE 10. Use of Adjectives "All," "100%," and Similar Absolute Terms.

It is an unfair trade practice to use the adjective term "All" or "100%," or words, terms or expressions of similar import, in connection with the name or designation of any fiber contained in hosiery, such as, for example, "All Silk," "100% Silk," etc., when the hosiery or a specifically named section thereof so described or referred to does not consist entirely of the fiber named, including decorations, webbing of superimposed garter, and all other parts composed of fiber. Nothing in this rule shall be construed as prohibiting the truthful and non-deceptive use of any such designation as descriptive of hosiery which is composed entirely of the fiber mentioned with certain exceptions, provided such excepted parts are, in immediate conjunction with the designation, set forth, together with the fiber or other material content of the excepted parts, as for example, "All Silk Except Rayon Stripe," "All Silk with Rayon Webbing."

RULE 11. "Irregulars," "Seconds," "Thirds."

(a) Hosiery which are irregulars, or which are or are represented as being seconds or thirds, shall be marked "IRREGULARS," "SECONDS," or "THIRDS," respectively, (as hereinafter provided), together with the fiber content stated in conformity with the provisions of Rule 9; subject, however, to the following exception: In respect of hosiery other than ladies' and misses' full length and knee length hosiery, the term "MISCELLANEOUS UNKNOWN FIBERS," or the term "UNDETERMINED MISCELLANEOUS FIBERS," may be used in connection with such word "IRREGULARS," "SECONDS," or "THIRDS," in lieu of stating and disclosing specifically the fibers of which such hosiery is composed, provided the fibers or the composition of fibers is unknown by reason of manufacturing processes making it impossible or infeasible to know the respective fiber content or composition of the various hose in miscellaneous lots accumulated, through mill inspection, as irregulars, seconds, or thirds. The following are illustrations of such marking provided for in this exception:

"SECONDS
MISCELLANEOUS UNKNOWN FIBERS"

"THIRDS
UNDETERMINED MISCELLANEOUS FIBERS"

(b) For purposes of this rule, "SECONDS," or "THIRDS" shall

be considered as including all hosiery which is not of first quality or which contains runs, obvious mends, irregularities, substantial imperfections, or defects in material, construction or finish, or which is otherwise not of first quality. "Irregulars" shall be considered "Seconds" or "Thirds" in which the imperfections in the hose are limited to irregularities in dimensions, size, color or weave, without the presence in the hose of any obvious mends, runs, tears or breaks in the fabric or any substantial damage to the yarn or fabric itself. Hosiery not of first quality shall be marked as "SECONDS" or "THIRDS" unless they definitely come within the class of irregulars as herein defined, in which event they may be marked "IRREGULARS" instead of "SECONDS" or "THIRDS."

(c) The marking upon the hose provided for in this rule shall be made in a conspicuous and nondeceptive manner with sufficient permanency or indelibility as to carry through the channels of trade to the ultimate consumer in clearly legible condition. Letters which are of full face type and at least $\frac{1}{8}$ inch in height may be used for this purpose. The word "IRREGULARS," "SECONDS," or "THIRDS" as required by or as may be used under this rule shall be set out distinctly and on each stocking, sock, or other unit, whether sold in pairs, threes, or otherwise.

(d) It is an unfair trade practice to cause any hosiery to be falsely or deceptively marked, advertised, described, branded, labeled, or otherwise represented, either as not being or as being "IRREGULARS," "SECONDS," or "THIRDS" when such is not the fact. It is also an unfair trade practice to fail or refuse to make the disclosure in respect of hosiery which are irregulars, seconds, or thirds as provided for in this rule, such nondisclosure having the capacity and tendency or effect of misleading or deceiving the purchasing or consuming public.

RULE 12. Loading or Adulterating Materials or Fillers.

(a) This rule refers to nonfibrous materials which may be used in the hosiery, other than necessary dyeing and/or finishing materials required to produce the color and finish of the product.

(b) Where fillers or loading or adulterating materials have been added to the product, whether in the form of excess finishing materials or otherwise, full and nondeceptive disclosure of the presence of such substances and the maximum percentage or proportion in which such substances are present shall be made, by transfer, stamp, mark, label, rider ticket or tag firmly attached to the product, and in invoices, price lists, catalogues, and whatever advertising and sales promotional descriptions or representations may be used in respect of such hosiery, however disseminated or published.

(c) Where the product contains silk which has been weighted with metallic substance or contains silk noil, the disclosure of such weighting

materials and as to such noil shall be made in accordance with the provisions of Rule 8.

(d) It is an unfair trade practice to fail or refuse to make the disclosure as provided for in this rule, such nondisclosure having the capacity and tendency or effect of misleading or deceiving the purchasing or consuming public; and it is an unfair trade practice to fail to take such other steps as may be necessary to avoid the sale or distribution of such loaded, adulterated, or filled hosiery in the channels of trade or to the purchasing or consuming public under conditions which are false, misleading or deceptive.

RULE 13. Deceptive Set-up or Arrangement of Disclosed Information.

(a) In setting forth the name of any fiber or any item, statement, percentage, or other information required to be disclosed under any of these rules, the same shall be set forth clearly and unequivocally and not in type or manner so disproportionate or so minimized, obscured, or remotely or inconspicuously placed as thereby to have the capacity and tendency or effect of misleading or deceiving purchasers or the consuming public. Deceptive or misleading type, print, or forms of arrangement shall also be avoided in the use of names of manufacturing processes, trade-marks, designations of construction, or of any information set forth in connection with hosiery, irrespective of whether such deceptive or misleading tendencies or effects are brought about through disproportionately enlarging, emphasizing, or conspicuously placing certain words, designations, or representations, or by minimizing, obscuring, or inconspicuously or remotely placing certain information, words, or statements, or whether brought about through some other means or device.

(b) It is an unfair trade practice to use or to cause to be used in respect of hosiery any such deceptive or misleading set-up, arrangement, method or device inhibited by the foregoing provisions of this rule.

RULE 14. Removal, Obliteration, or Alteration of Marks.

It is an unfair trade practice for any manufacturer, converter, processor, dyer, finisher, distributor, dealer, importer or vendor, or person acting for or in collusion with any concern or vendor,

(a) to remove, obliterate, deface, change, alter, conceal, or make illegible any information required by these rules to be disclosed in the transfer, stamp, mark, label, rider ticket or tag on, or insert in, the hosiery, without replacing the same before sale, resale or distribution for sale with a proper mark meeting the requirements of these rules; or

(b) to sell, resell, or distribute hosiery without its being marked, stamped, branded, labeled, or tagged, and described in accordance with the requirements of these rules; or

(c) to otherwise tamper with, remove, obliterate, deface, change, alter, or conceal any marks or disclosure required by these rules for the purpose or with the capacity and tendency or effect of thereby deceptively concealing facts required to be disclosed or of causing the hosiery to be sold, distributed, or resold under false, misleading or deceptive conditions.

(NOTE.—Hosiery which has been redyed shall be re-marked in accordance with the requirements of these rules. Hosiery found to contain a false or deceptive mark, or a mark contrary to the requirements of these rules, shall be re-marked in accordance with these rules.)

RULE 15. Misbranding, Misrepresentation, and Deceptive Selling Methods Not Otherwise Specifically Covered.

It is an unfair trade practice in the course of, or in relation to, the marketing and distribution of hosiery

(a) to use, or cause or further the use of, any marks, brands, labels, depictions, advertisements, trade promotional descriptions, or representations of any kind, however published or disseminated, which directly or by implication are false, misleading or deceptive to the purchasing or consuming public in respect of the hosiery, its grade, character, content, construction, origin, size, style, fashion, gauge, thread, twist of yarn, quality, quantity, value, price, serviceability, resistance to snagging or the development of runs, holes or breaks in the fabric, the method of manufacture, treatment or preparation of fiber, yarn or product, or in any other material respect; or

(b) to offer for sale, sell, or distribute, or cause or promote the sale or distribution of, the hosiery under any other conditions or selling practices which have the capacity and tendency or effect of misleading or deceiving the purchasing or consuming public.

(NOTE.—Geographical or coined words, phrases or designations, or any designations, devices or representations, which are false or deceptive, or which although not literally false are set up, arranged or used in such way as to give rise to deceptive or misleading implications, are not to be used.)

RULE 16. Misrepresentations as to Being Manufacturer, Producer, or Importer.

(a) It is an unfair trade practice for any person, partnership, corporation or organization, by trade or corporate name or otherwise, to represent or to hold himself or itself out as being the manufacturer, producer or importer of any hosiery advertised, offered for sale, sold or distributed, when such is not true in fact.

(b) It is an unfair trade practice for any person, partnership, corporation or organization, directly or indirectly, to represent himself or itself as being the owner or operator of a mill or producing company

making hosiery advertised, offered for sale, sold or distributed, when such person or concern does not in fact own or operate such a mill or producing company making such hosiery. The use of any other deceptive or misleading device or method respecting the character, nature or status of the business of any person, concern or organization engaged in selling or promoting the sale of hosiery is likewise an unfair trade practice.

RULE 17. Fictitious Prices.

(a) The use by any vendor (whether manufacturer, processor, importer, distributor, dealer, or other person or concern) of any false, fictitious or exaggerated and misleading price tags or price designations in respect of hosiery offered for sale, sold or distributed by such vendor is an unfair trade practice.

(b) It is also an unfair trade practice for any manufacturer, processor, importer, distributor, dealer, or other person, concern or organization to supply to dealers or other vendors, or to aid or assist dealers or vendors in the use of, any price tags or price designations which such manufacturer, processor, importer, distributor, dealer, or person, concern or organization has reason to believe will be used, or which are intended for use, directly or indirectly, by dealers, salesmen, or other vendors of hosiery for the purpose or with the capacity and tendency or effect of misleading or deceiving the purchasing or consuming public in respect to the value or regular selling price of hosiery, or in any other material respect.

RULE 18. Substitution of Products Not Conforming to Order.

It is an unfair trade practice, in filling orders for hosiery, to ship or deliver hosiery which does not conform in construction, quality and value, and in every other essential respect, to samples, specifications or representations upon and in consideration of which the order was placed, with the capacity and tendency or effect of causing purchasers or the consuming public to be misled or deceived by reason of such substitution, or otherwise. Nothing in this rule shall be construed as prohibiting any substitution made with the knowledge and consent of the purchaser if and when deceptive or unfair practices are in no way involved directly or indirectly.

RULE 19. Size Markings and Designations.

The marking of hosiery as to size shall represent the true and normal size of such hosiery, and it is an unfair trade practice (a) to mark or represent any hosiery as being of a certain size which is not the true and normal size of such hosiery; or (b) to alter the true and normal size of hosiery by stretching or manipulation in a manner deceptive to the purchasing or consuming public.³

³ Commercial Standard CS46-40, "Hosiery Lengths and Sizes," is recognized as a proper method to follow in determining measurements and sizes of hosiery.

RULE 20. Encouraging and Promoting Deceptive Merchandising Methods—Aiding and Abetting Violation of Rules.

It is an unfair trade practice for any manufacturer, producer, processor, importer, finisher, converter, distributor, dealer or vendor of hosiery, or any other person, concern or organization

(a) to encourage, aid, abet, induce or coerce another to sell, offer for sale or distribute hosiery under stamps, labels, advertisements, representations, or other means or devices which are false, misleading or deceptive; or

(b) to aid, abet, induce or coerce another to omit, remove, or refuse to make the disclosure as to content of hosiery required by the foregoing provisions of these Group I rules, or to use any of the unfair trade practices herein specified.

GROUP II*

RULE A. Information as to Treatment and Care of Products.

The practice, by producers, manufacturers, distributors and vendors, of furnishing and disseminating, through tags, labels, advertisements, or other publicity, accurate information as to the proper treatment, care and washing of hosiery products is approved and recommended as a desirable practice to follow in the interest of enabling consumers to obtain and enjoy full benefit of the desirable qualities and service of such products.

Promulgated by the Federal Trade Commission May 15, 1941.

* See page VIII for headnote applicable to Group II Rules.

TRADE PRACTICE RULES

FOR THE

BEAUTY AND BARBER EQUIPMENT AND
SUPPLIES INDUSTRY

PROMULGATED AUGUST 9, 1941

STATEMENT BY THE COMMISSION

Trade practice rules for the Beauty and Barber Equipment and Supplies Industry, as hereinafter set forth, are promulgated by the Federal Trade Commission under its trade practice conference procedure.

The rules are directed to the elimination and prevention of unfair trade practices, including misrepresentation or deception and other unfair methods, to the end that the business of the industry may be conducted under free and fair competitive conditions and that the public, as well as the industry, may be protected from such harmful practices. The provisions of the rules relate to the sale and distribution, by manufacturers, importers, jobbers, distributors, dealers, and other marketers, of the products of the industry, which are used by or marketed through beauty parlors, hair-dressing establishments, and barber shops. Such products embrace a wide range of beauty and barber preparations; also, the many articles or items of equipment, furnishings, and supplies for such establishments and shops. According to statistical information furnished the Commission, the annual volume of business in such products aggregates approximately \$80,000,000 at wholesale.

The proceeding for establishment of trade practice rules was instituted upon application from the industry. In the course thereof a general trade practice conference, under the auspices of the Commission, was held in Chicago, Illinois. At such conference proposed rules were considered and were thereupon submitted on behalf of the industry to the Commission for its consideration. Following preliminary study and necessary revisions, a complete draft of proposed rules in appropriate form was made available to all interested or affected parties upon public notice whereby they were afforded opportunity to present their views to the Commission, including such pertinent information, suggestions, or objections as they desired to submit, and to be heard in the premises. Accordingly, public hearing pursuant to such notice was held in Washington, D. C., and all matters there presented, or otherwise submitted, were duly received and considered.

Upon consideration of the entire matter final action has been taken

by the Commission, whereby it has approved the rules hereinafter appearing in Group I. Such provisions supersede and replace the former rules for the Beauty and Barber Supply Dealers' Industry issued on November 12, 1931.

These rules promulgated by the Commission are designed to foster and promote the maintenance of fair competitive conditions in the interest of the industry and the public. Their operation is to be directed toward this end and is not to permit of the use of any practice which suppresses competition, restrains trade, fixes or controls price through combination or agreement, or which otherwise injures, destroys, or prevents competition. Such rules do not in any respect supplant, or relieve anyone of the necessity of complying with, the applicable requirements of laws relating to cosmetics, drugs, devices, or other products of this industry, or of any other applicable provisions of law.

THE RULES

GROUP I*

RULE 1. *Deception as to Industry Products.*

It is an unfair trade practice directly or indirectly to cause or promote the sale, distribution, or use of any product of the industry by means of advertisements, descriptions, photographs, depictions, engravings, insignia, designs, illustrations, brands, labels, radio broadcasts, or other representations or selling methods,

(a) which have the capacity and tendency or effect of misleading or deceiving the purchasing or consuming public with respect to the manufacture, processing, packing, distribution, origin, grade, quality, quantity, serviceability, size, substance, content, condition, material, character, or price, or results obtainable from or attendant upon the use thereof; or

(b) which are false, misleading, or deceptive by reason of the concealment or nondisclosure of material fact; or

(c) which are false, misleading, or deceptive in any other respect.

(NOTE.—Among the inhibitions of this rule, but not in limitation thereof, is the "false advertisement" of any "cosmetic," "device," or "drug," as such terms are defined in Section 15 of the Federal Trade Commission Act.)

RULE 2. *Misuse of Word "Free."*

The use of the word "free," or the equivalent thereof, where not properly or fairly qualified when the article is in fact not free, with

* See page VIII for headnote applicable to Group I Rules.

the capacity and tendency or effect of misleading or deceiving the purchasing or consuming public, is an unfair trade practice.

RULE 3. *Misrepresentation as to Price Reductions.*

It is an unfair trade practice for any member of the industry to represent, in advertising or otherwise, that the price of any article, commodity, or other product, has been reduced from what is in fact a fictitious price, or that such price is a reduced or a special price when such price is in fact the regular selling price of such article, commodity, or other product, or that the regular price thereof is higher when such is not the fact, or to otherwise falsely or deceptively represent the past or current price of any article, commodity, or other product.

RULE 4. *Imitation of Trade-Marks, Trade Names, Etc.*

The imitation of trade-marks, trade names, labels, brands, or containers, or any other distinctive and exclusively owned words, phrases, sub-titles, or marks of competitors, with the capacity and tendency or effect of thereby misleading or deceiving the purchasing or consuming public, is an unfair trade practice.

RULE 5. *False Invoicing.*

Withholding from or inserting in an invoice, billing, or statement any material information by reason of which omission or insertion a false record is made, wholly or in part, of the transaction which such invoice or billing or statement purports to represent, with the effect of thereby misleading or deceiving the purchasing or consuming public, is an unfair trade practice.

RULE 6. *"Push Money," "Spiffs," Etc.*

It is an unfair trade practice for any member of the industry, directly or indirectly, to give, pay, or contract to pay, to any clerk or salesperson of any customer-dealer handling two or more competitive brands of merchandise, "push money," "spiffs," or any other bonus, gratuity, or payment, as an inducement or encouragement to push or promote the sale of such member's product or products over competing products of other members in the industry,

(a) with the capacity and tendency or effect of thereby causing the purchasing or consuming public, when making purchases of such products, to be misled or deceived into the erroneous belief that such clerk or salesperson is free from any such special interest or influence, or is not so subsidized or paid by such member; or

(b) with the capacity and tendency or effect of thereby hampering and unduly restricting the legitimate, free, and full use and enjoyment of such retail trade outlets for the distribution to the public of competing products; or

(c) with the purpose or effect, directly or indirectly, of otherwise substantially lessening competition or unreasonably restraining trade in the marketing of the products of the industry; or

(d) with the effect of thereby bringing about the granting of an illegally discriminatory service, payment, or price contrary to Section 2 of the Clayton Act as amended by the Act of Congress approved June 19, 1936, known as the Robinson-Patman Act.

Nothing in this rule shall be construed to prohibit any sales plan which involves no deception, illegal discrimination, monopolistic practices, or other illegal effects or practices.

RULE 7. *Inducing Breach of Contract.*

Inducing or attempting to induce the breach of existing lawful contracts between competitors and their customers or their suppliers by any false or deceptive means whatsoever, or interfering with or obstructing the performance of any such contractual duties or services by any such means, with the purpose and effect of unduly hampering, injuring, or prejudicing competitors in their businesses, is an unfair trade practice.

RULE 8. *Defamation of Competitors or Disparagement of Their Products.*

The defamation of competitors by falsely imputing to them dishonorable conduct, inability to perform contracts, questionable credit standing, or by other false representations, or the false disparagement of the grade, quality, or manufacture of the products of competitors, or of their business methods, selling prices, values, credit terms, policies, or services, is an unfair trade practice.

RULE 9. *Aiding or Abetting Use of Unfair Trade Practices.*

It is an unfair trade practice for any person, firm, or corporation to aid, abet, coerce, or induce another, directly or indirectly, to use or promote the use of any unfair trade practice specified in these rules.

A Committee on Trade Practices is hereby created by the industry to cooperate with the Federal Trade Commission and to perform such acts as may be legal and proper to put these rules into effect.

Promulgated by the Federal Trade Commission August 9, 1941.

TRADE PRACTICE RULES

FOR THE

LUGGAGE AND RELATED PRODUCTS INDUSTRY

PROMULGATED SEPTEMBER 17, 1941

STATEMENT BY THE COMMISSION

Trade practice rules for the Luggage and Related Products Industry, as hereinafter set forth, are promulgated by the Federal Trade Commission under its trade practice conference procedure.

The rules are directed to the elimination and prevention of misrepresentation, deceptive concealment, and various other unfair trade practices, and are issued in the interest of protecting industry, trade, and the public from the harmful effects of such unfair methods or practices. The provisions of the rules relate to the sale and distribution, by manufacturers, jobbers, distributors, dealers, and other marketers, of the products of the industry which consist of trunks, suitcases, traveling bags, brief cases, satchels, sample cases, instrument cases, and similar articles; also, of so-called fancy leather goods such as bill-folds, wallets, key cases, coin purses, card cases, etc. According to available statistics, the volume of business transacted by the manufacturing branch of this industry in 1939 amounted to around \$50,000,000.

The proceeding for the establishment of trade practice rules was instituted upon application from the industry. During the course thereof a general trade practice conference, under the auspices of the Commission, was held in Atlantic City, New Jersey. At such conference proposed rules were considered and were thereupon submitted on behalf of the industry to the Commission for its consideration. Thereafter a complete draft of proposed rules in appropriate form was made available to all interested or affected parties upon public notice whereby they were afforded opportunity to present their views to the Commission, including such pertinent information, suggestions or objections as they desired to submit, and to be heard in the premises. Accordingly, public hearing pursuant to such notice was held in Washington, D. C., and all matters there presented, or otherwise submitted, were duly received and considered.

Upon consideration of the entire matter final action has been taken by the Commission whereby it has approved and received, respectively, the following trade practice rules appearing under Group I and Group II.

THE RULES

GROUP I*

RULE 1. *Deception in General.*

It is an unfair trade practice to use, or cause or promote the use of, any advertisement, description, guarantee, warranty, testimonial, endorsement, illustration, brand, mark, or label, or any other representation or selling method,

(a) which has the capacity and tendency or effect of misleading or deceiving the purchasing or consuming public with respect to the grade, quality, quantity, material content, serviceability, nature, origin, size, construction, manufacture, processing, or distribution of any product of the industry, or with respect to the kind, grade, weight, thickness, durability, character, or finish of leather, purported leather, canvas, fiber, fabric, wood, or other material of which the product is made in whole or in part, or with respect to the stitching, lining, backing, hardware, or fittings used therein; or

(b) which is false, misleading, or deceptive in any other material respect or by reason of the concealment of any material fact.

RULE 2. *Deception Through Concealment and Nondisclosure of Material Facts.*

(a) To prevent deception of the purchasing public, luggage, (namely, suitcases, traveling bags, trunks, brief cases, satchels, sample cases, instrument cases, and similar articles of luggage), made in whole or in part of the several types of material mentioned below, shall be marked by stamp, tag, or label clearly and nondeceptively revealing the true character of such material, in accordance with the following provisions:

(1) *Split Leather.*—Where the article is made of or contains so-called split leather, or leather other than the top grain, the stamp, tag, or label shall show that such leather is split or cut from the under side of the hide and is not top grain leather, as for example:

“Split Cowhide.”

Where the article is made in major proportion of top grain leather with the exception of certain recognizably distinct sections or parts, such as partitions, gussets, etc., which are made of a different kind, type, or character of leather, the stamp, tag, or label may be marked under this rule in such manner as will truthfully and nondeceptively show that the leather in the product is all top grain of a

* See page VIII for headnote applicable to Group I Rules.

designated kind with certain other kind, type, or character of leather or material in designated parts, as for example:

"Top Grain Cowhide
with Split Cowhide Gussets
and Partitions."

(2) *Embossed or Processed Leather.*—Where the article is made of or contains leather which has been embossed, dyed, grained, finished, or otherwise processed, in such manner as to simulate or imitate leather of a different kind, type, grade, quality, grain, or characteristic, the stamp, tag, or label shall show the true kind of leather used and reveal the fact that it is not the kind or type of leather it purports to be or that it is only an imitation or simulation thereof, as for example:

"Split Cowhide
Embossed to Imitate Walrus."

"Top Grain Cowhide
Imitation Pig Grain."

Where top grain leather has been embossed, dyed, grained, finished, or processed with a geometrical design or other design not simulating or imitating the natural grain or characteristics of any hide or leather, the mark designating such material may be limited to showing the kind of leather and the fact that it is embossed or processed, as for example:

"Embossed Top Grain Cowhide."

"Split Cowhide
Embossed Design."

(3) *Backed Material.*—Where the article is made of or contains leather which is backed with fabric, or with any material other than leather, or with split leather, (such backing being glued or laminated to the outer leather), the stamp, tag, or label shall disclose the fact that such leather is backed with fabric, or with certain designated material other than leather, or with split leather of a certain kind, as the case may be. For example:

"Top Grain Cowhide
Backed with Canvas."

"Top Grain Pig
Backed with Split Cowhide."

(4) *Products Simulating or Imitating Leather.*—Where the article is made of or contains, on the exterior or to any substantial extent in the interior, material other than leather but which simulates or imitates leather, the stamp, tag, or label shall show that

such material is not leather but is of certain other designated material, as for example:

"Buckram."

(5) *Rayon or Linen Lined.*—Where the article is lined with rayon fabric or otherwise contains rayon in substantial part, or where the article is lined with, or otherwise contains in substantial part, fabric which simulates or purports to be linen but is not in fact linen, the stamp, tag, or label shall disclose the fiber content of such lining or other part by use of a truthful designation thereof, as for example, "Rayon Lined," "Cotton Lined," or "Rayon and Cotton Lining," as the case may be, with the fibers stated in the order of their predominance by weight, beginning with the largest single constituent, where the fabric is composed of two or more fibers. (Where the article is of a type coming within the provisions of the Wool Products Labeling Act of 1939, the mark shall be in accordance with the requirements of said Act and the Rules and Regulations thereunder.)

(6) *Leather of Substandard Thickness.*—Where luggage is made wholly, or in any exterior part, of leather which does not exceed two ounces per square foot as measured by the Woburn gauge, the stamp, tag, or label shall disclose the minimum weight of such leather per square foot and shall reveal the fact that the same is substandard. Nothing in this paragraph, however, shall be construed as requiring the marking of such leather parts of the article as being of substandard thickness which parts it is necessary, in the manufacture of the article, to reduce by skiving to a thickness below the minimum, such as welting, edging, trimming, etc., necessarily required to be skived when manufacturing the article.

(b) The information to be revealed, under the foregoing provisions of this rule, shall be set forth on the stamp, tag, or label conspicuously and nondeceptively. Manufacturers, or those first placing the products in the channels of trade, in attaching such stamps, tags, or labels, shall cause the same to be affixed to the articles in such sufficiently secure manner as to remain on the articles until they reach the ultimate purchaser or consumer after having passed through the ordinary channels of trade, thus avoiding the necessity of further marking as to matters required by this rule to be disclosed, so long as such original stamp, tag, or label is clear and truthful and remains upon the product. This shall not, however, relieve distributors, dealers, or other vendors of the necessity of seeing to it that such articles, when being offered for sale, sold, or distributed to their customers, are properly stamped, tagged, or labeled with the information required by this rule to be disclosed thereon.

(c) The sale, resale, or distribution, by any manufacturers, dis-

tributors, dealers, or other vendors, of any article covered by this rule without being properly stamped, tagged, or labeled to disclose the information herein specified, with the capacity and tendency or effect of misleading or deceiving the purchasing or consuming public, is an unfair trade practice.

RULE 3. Deceptive Practices as to Animal Designations, Aniline Finish, Graining, Embossing, Processing, Buffing, Hardware, Etc.

In offering for sale, selling, or distributing, or promoting or causing the sale or distribution of, industry products through advertisements, brands, labels, sales literature, or otherwise, it is an unfair trade practice to represent, directly or by implication:

(a) That any such product is made of a certain kind or type of leather when it is in fact composed of leather of a different kind or type; or that any leather in such product is from the hide or skin of a certain designated animal when in fact it is from a different animal; as for example, using the unqualified term "Walrus" or "Walrus Grained" as descriptive of leather which is not walrus, or the term "Calf Finish Leather" as descriptive of leather which is not in fact calf.

(b) That any such product is colored, finished, or dyed with aniline dye when such is not true in fact.

(c) That any such product or any part thereof is dyed, embossed, grained, processed, finished, or stitched in a certain manner when such is not true in fact.

(d) That any such product is composed in whole or in part of leather when such product or part thereof is composed of material other than leather.

(e) That any such product is composed in whole or in part of top grain leather when such product or part thereof is in fact composed of split leather or of material other than top grain leather. For purposes of the rules herein set forth, leather from which either a layer of the top surface or grain, or a so-called buffing, has been removed, shall not be considered top grain leather. (See subparagraph (6) of Rule 2 (a) for requirement as to marking leather of substandard thickness.)

(f) That the hardware or any item thereof contained in any such product is brass, solid brass, or some other designated metal, when such is not true in fact or when such hardware is only plated or coated with the metal designated and the remaining metal therein is of a different kind.

RULE 4. Misuse of the Terms "Genuine," "Real," "Natural," "Selected," "Warranted," Etc.

It is an unfair trade practice to use the words "Genuine," "Real,"

"Natural," "Selected," "Warranted," or any other term or representation of similar import, in any way as descriptive (a) of split leather; or (b) of leather which has been embossed or processed to simulate a different kind, grade, type, or quality of leather; or (c) of any simulative, imitative, or substitute material, with the capacity and tendency or effect of thereby misleading or deceiving the purchasing or consuming public.

RULE 5. Misuse of the Terms "Waterproof," "Water Repellent," "Dustproof," or "Warp-proof."

It is an unfair trade practice to use the terms "Waterproof," "Water Repellent," "Dustproof," or "Warp-proof," or any other word, term, expression, or representation of similar import, in any way as descriptive of industry products composed of canvas or other materials when such products are not in fact waterproof, water repellent, dustproof, or warp-proof, respectively.

RULE 6. Fictitious Animal Designations.

It is an unfair trade practice to use, falsely or deceptively, in advertisements, labels, tags, brands, or other representations of industry products, any depiction or device, trade name, coined name, or other name or words descriptive of such products as being made of leather from the skin or hide of an animal which is in fact nonexistent.

RULE 7. False Invoicing.

Withholding from or inserting in invoices, bills of lading, or other documents of title, any statements or information by reason of which omission or insertion a false record is made, wholly or in part, of the transactions represented on the face of such invoices, bills of lading, or other documents of title, with the effect of thereby misleading or deceiving the purchasing or consuming public, is an unfair trade practice.

RULE 8. Substituting Inferior Materials Not Conforming to Specifications.

The practice of using or substituting materials inferior in grade or quality to those specified in any contract or order, without the consent of the purchaser to such use or substitution, or with the capacity and tendency or effect of misleading or deceiving the purchasing or consuming public, is an unfair trade practice.

RULE 9. Commercial Bribery.

It is an unfair trade practice for a member of the industry, directly or indirectly, to give, or offer to give, or permit or cause to be given, money or anything of value to agents, employees, or representatives of customers or prospective customers, or to agents, employees, or representatives of competitors' customers or prospective customers, with-

out the knowledge of their employers or principals, as an inducement to influence their employers or principals to purchase or contract to purchase products manufactured or sold by such industry member or the maker of such gift or offer, or to influence such employers or principals to refrain from dealing in the products of competitors or from dealing or contracting to deal with competitors.

RULE 10. *Defamation of Competitors or Disparagement of Their Products.*

The defamation of competitors by falsely imputing to them dishonorable conduct, inability to perform contracts, questionable credit standing, or by other false representations, or the false disparagement of the grade, quality, or manufacture of the products of competitors, or of their business methods, selling prices, values, credit terms, policies, or services, is an unfair trade practice.

RULE 11. *Procurement of Competitors' Confidential Information by Unfair Means and Wrongful Use Thereof.*

It is an unfair trade practice for any member of the industry to obtain information concerning the business of a competitor by bribery of an employee or agent of such competitor, by false or misleading statements or representations, by the impersonation of one in authority, or by any other unfair means, and to use the information so obtained in such a manner as to injure said competitor in his business or to suppress competition or unreasonably restrain trade.

RULE 12. *Unfair Threats of Infringement Suits.*

The circulation of threats of suit for infringement of patents or trade-marks among customers or prospective customers of competitors, not made in good faith but for the purpose or with the effect of harassing or intimidating such customers or prospective customers, or of unduly hampering, injuring, or prejudicing competitors in their businesses, is an unfair trade practice.

RULE 13. *Deceptive Use of Trade or Corporate Names, or Trade-marks, Etc.*

The use of any trade name, corporate name, trade-mark, or other trade designation which has the capacity and tendency or effect of misleading or deceiving the purchasing or consuming public as to the character, name, nature, or origin of any product of the industry, or any material used therein, or in any other material respect, is an unfair trade practice.

RULE 14. *Imitation of Trade-marks, Trade Names, Etc.*

The imitation or simulation of the trade-marks, trade names, brands, or labels of competitors, with the capacity and tendency or effect of

thereby misleading or deceiving the purchasing or consuming public, is an unfair trade practice.

RULE 15. *Coercing Purchase of One Product as a Prerequisite to the Purchase of Other Products.*

The practice of coercing the purchase of one or more products as a prerequisite to the purchase of one or more other products, where the effect may be to substantially lessen competition or tend to create a monopoly or to unreasonably restrain trade, is an unfair trade practice.

RULE 16. *Inducing Breach of Contract.*

Inducing or attempting to induce the breach of existing lawful contracts between competitors and their customers or their suppliers by any false or deceptive means whatsoever, or interfering with or obstructing the performance of any such contractual duties or services by any such means, with the purpose and effect of unduly hampering, injuring, or prejudicing competitors in their businesses, is an unfair trade practice.

RULE 17. *Misrepresentation as to Character of Business.*

For any person, firm, or corporation to hold himself or itself out to the public as a manufacturer or wholesaler when such is not the fact, or in any other manner to misrepresent the character, extent, or type of his or its business, is an unfair trade practice.

RULE 18. *Misuse of Terms "Special," "Bargain," "Close-outs," "Discontinued Lines," Etc.*

It is an unfair trade practice to advertise, describe, or otherwise represent regular lines of merchandise as "Special," "Bargain," "Close-outs," "Discontinued Lines," or by words or representations of similar import, when such are not true in fact; or to so advertise, describe, or otherwise represent merchandise where the capacity and tendency or effect thereof is to lead the purchasing and consuming public to believe such merchandise is being offered for sale or sold at greatly reduced prices or at so-called "bargain" prices when such is not the fact.

RULE 19. *Deception in Distribution of Special Lots.*

In the case of lots or quantities of luggage advertised or offered for sale at so-called special or bargain sales or reduced price sales or otherwise, it is an unfair trade practice to use advertisements or representations thereof which import or imply that such merchandise consists entirely or in substantial or greater part of products or articles of well-known manufacturers or of well-known or reputable brands or of products or articles of certain high quality, grade, or price, when no such products or articles are contained in said lot or quantity of merchandise or when only a relatively small quantity or number thereof is

contained in such merchandise and said fact is not fully and nondeceptively disclosed in the advertisements and representations, or when such advertisements or representations otherwise have the capacity and tendency or effect of misleading or deceiving the purchasing or consuming public.

RULE 20. Misuse of Word "Free."

The use of the word "free," or the equivalent thereof, where not properly or fairly qualified when the article is in fact not free, with the capacity and tendency or effect of misleading or deceiving the purchasing or consuming public, is an unfair trade practice.

RULE 21. Fictitious Prices.

It is an unfair trade practice to sell or offer for sale industry products at prices purported to be reduced from what are in fact fictitious prices, or to sell or offer for sale such products at a purported reduction in price when such purported reduction is in fact fictitious or is otherwise misleading or deceptive.

RULE 22. Use of Lottery Schemes.

The offering or giving of prizes, premiums, or gifts in connection with the sale of industry products, or as an inducement thereto, by any scheme which involves lottery or scheme of chance, is an unfair trade practice.

RULE 23. Unlawful Interference.

It is an unfair trade practice for any member of the industry, by means of any monopolistic practices, or through combination, conspiracy, coercion, boycott, threats, or any other unlawful means, directly or indirectly, to interfere with a competitor's right to purchase his materials and supplies from whomsoever he chooses, or to sell to whomsoever he chooses.

RULE 24. Selling Below Cost.

The practice of selling industry products below the seller's cost, when pursued with wrongful intent of thereby injuring a competitor and where the effect of such practice is to unreasonably restrain trade, tend to create a monopoly, or substantially lessen competition, is an unfair trade practice.

This rule is not to be construed as prohibiting all sales below cost, but only such selling below the seller's cost as is resorted to and pursued as a monopolistic practice with the wrongful intent referred to and coupled with the effect of unreasonably restraining trade, tending to create a monopoly, or substantially lessening competition.

The costs referred to in the rule are actual costs of the respective seller and not some other figure or average costs in the industry determined by an industry cost survey or otherwise.

RULE 25.

(a) *Prohibited Discriminatory Prices, or Rebates, Refunds, Discounts, Credits, Etc., Which Effect Unlawful Price Discrimination.*—It is an unfair trade practice for any member of the industry engaged in commerce,¹ in the course of such commerce, to grant or allow, secretly or openly, directly or indirectly, any rebate, refund, discount, credit, or other form of price differential, where such rebate, refund, discount, credit, or other form of price differential, effects a discrimination in price between different purchasers of goods of like grade and quality, where either or any of the purchases involved therein are in commerce,¹ and where the effect thereof may be substantially to lessen competition or tend to create a monopoly in any line of commerce,¹ or to injure, destroy, or prevent competition with any person who either grants or knowingly receives the benefit of such discrimination, or with customers of either of them: *Provided, however*—

(1) That the goods involved in any such transaction are sold for use, consumption, or resale within any place under the jurisdiction of the United States;

(2) That nothing herein contained shall prevent differentials which make only due allowance for differences in the cost of manufacture, sale, or delivery resulting from the differing methods or quantities in which such commodities are to such purchasers sold or delivered;

(3) That nothing herein contained shall prevent persons engaged in selling goods, wares, or merchandise in commerce¹ from selecting their own customers in bona fide transactions and not in restraint of trade;

(4) That nothing herein contained shall prevent price changes from time to time where made in response to changing conditions affecting either (a) the market for the goods concerned, or (b) the marketability of the goods, such as, but not limited to, actual or imminent deterioration of perishable goods, obsolescence of seasonal goods, distress sales under court process, or sales in good faith in discontinuance of business in the goods concerned.

(b) *Prohibited Brokerage and Commissions.*—It is an unfair trade practice for any member of the industry engaged in commerce,¹ in the course of such commerce, to pay or grant, or to receive or accept, anything of value as a commission, brokerage, or other compensation, or any allowance or discount in lieu thereof, except for services rendered in connection with the sale or purchase of goods, wares, or merchandise, either to the other party to such transaction or to an agent, representative, or other intermediary therein where such intermediary is acting

¹ See footnote, p. 460.

in fact for or in behalf, or is subject to the direct or indirect control, of any party to such transaction other than the person by whom such compensation is so granted or paid.

(c) *Prohibited Advertising or Promotional Allowances, Etc.*—It is an unfair trade practice for any member of the industry engaged in commerce¹ to pay or contract for the payment of advertising or promotional allowances or any other thing of value to or for the benefit of a customer of such member in the course of such commerce as compensation or in consideration for any services or facilities furnished by or through such customer in connection with the processing, handling, sale, or offering for sale of any products or commodities manufactured, sold, or offered for sale by such member, unless such payment or consideration is available on proportionally equal terms to all other customers competing in the distribution of such products or commodities.

(d) *Prohibited Discriminatory Services or Facilities.*—It is an unfair trade practice for any member of the industry engaged in commerce¹ to discriminate in favor of one purchaser against another purchaser or purchasers of a commodity bought for resale, with or without processing, by contracting to furnish or furnishing, or by contributing to the furnishing of, any services or facilities connected with the processing, handling, sale, or offering for sale of such commodity so purchased upon terms not accorded to all purchasers on proportionally equal terms.

(e) *Inducing or Receiving an Illegal Discrimination in Price.*—It is an unfair trade practice for any member of the industry engaged in commerce¹ in the course of such commerce, knowingly to induce or receive a discrimination in price which is prohibited by the foregoing provisions of this Rule 25.

(f) *Purchases by Schools, Colleges, Universities, Public Libraries, Churches, Hospitals, and Charitable Institutions Not Operated for Profit.*—The foregoing provisions of this Rule 25 relate to practices within the purview of the Robinson-Patman Antidiscrimination Act, which Act and the application thereunder of this Rule 25 are subject to the limitations expressed in the amendment to such Robinson-Patman Antidiscrimination Act, which amendment was approved May 26, 1938, and reads as follows:

“Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That nothing in the Act approved June 19, 1936 (Public, Numbered 692, Seventy-fourth Congress, second session), known as the Robinson-Patman Antidiscrimination Act, shall apply to purchases of their supplies for their own use by schools, colleges, universities, public

¹ See footnote, p. 460.

libraries, churches, hospitals, and charitable institutions not operated for profit.” (52 Stat. 446; Supp. 4 U. S. C. Title 15, Sec. 13c.)

RULE 26. *Discriminatory Returns.*

It is an unfair trade practice for any member of the industry, engaged in commerce,¹ to discriminate in favor of one customer-purchaser against another customer-purchaser of the products of this industry, bought from such member of the industry for resale, by contracting to furnish or furnishing in connection therewith, upon terms not accorded to all customer-purchasers on proportionally equal terms, the service or facility whereby such favored purchaser is accorded the privilege of returning industry products so purchased and receiving therefor credit or refund of purchase price; provided, however, nothing in any of the rules herein shall prohibit or be used to prevent the return of merchandise by purchaser, for credit or refund of purchase price, when and because such merchandise has not been properly labeled in accordance with the requirements of these rules, or has been otherwise falsely or deceptively labeled or represented, or when and because such merchandise is defective in material, workmanship, or in any other respect contrary to warranty or purchase contract.

RULE 27. *False or Misleading Price Quotations.*

The publishing or circulating by any member of the industry of false or misleading price quotations, price lists, or terms of sale, with the capacity and tendency or effect of thereby misleading or deceiving the purchasing or consuming public, is an unfair trade practice.

RULE 28. *Consignment Distribution.*

It is an unfair trade practice for any member of the industry to employ the practice of shipping industry products on consignment or pretended consignment for the purpose and with the effect of artificially clogging or closing trade outlets and unduly restricting competitors' use of said trade outlets in getting their products to consumers through regular channels of distribution, thereby injuring, destroying, or preventing competition or tending to create a monopoly or to unreasonably restrain trade. Nothing in this rule shall be construed as restricting or preventing consignment shipping or marketing of industry products in good faith where suppression of competition, restraint of trade, or undue interference with competitors' use of the usual channels of distribution, is not effected.

RULE 29. *Aiding or Abetting Use of Unfair Trade Practices.*

It is an unfair trade practice for any person, firm, or corporation

¹ See footnote, p. 460.

to aid, abet, coerce, or induce another, directly or indirectly, to use or promote the use of any unfair trade practice specified in these rules.

GROUP II*

RULE A.

The industry recommends that all contracts should embody specifically and in full detail the quality, kind, and finish of any leather or substitute therefor required to be furnished under the terms of such contracts and that all other materials to be used shall be specifically described in proper and customary form and wording.

A Committee on Trade Practices is hereby created by the industry to cooperate with the Federal Trade Commission and to perform such acts as may be legal and proper to put these rules into effect.

Promulgated by the Federal Trade Commission September 17, 1941.

* See page VIII for headnote applicable to Group II Rules.

TRADE PRACTICE RULES

FOR THE

RAYON AND SILK DYEING, PRINTING AND FINISHING INDUSTRY

PROMULGATED DECEMBER 12, 1941

STATEMENT BY THE COMMISSION

Trade practice rules for the Rayon and Silk Dyeing, Printing and Finishing Industry, as hereinafter set forth, are promulgated by the Federal Trade Commission under its trade practice conference procedure.

The rules are directed to the prevention of unfair trade practices under laws administered by the Commission in the interest of maintaining fair competition in industry and protection of the public.

The industry's business is estimated to aggregate nearly \$100,000,000 annually, including the dyeing, bleaching, printing, finishing, or other processing, of fabrics made primarily of silk or rayon, or mixtures thereof; also skein-dyeing and other types of dyeing or finishing of fiber, yarn or fabric of similar composition, not including, however, the piece dyeing or processing of hosiery.

Application for establishment of trade practice rules was filed by members of the industry. Due proceedings thereon were had, including the holding of a general trade practice conference of the entire industry, the submission and consideration of proposed rules, and of briefs, memoranda and other presentations regarding the matter, together with public hearings at which all interested or affected parties were afforded opportunity to present their views to the Commission, including such pertinent information, suggestions or objections as they desired to submit.

Thereafter, and upon full consideration by the Commission of the entire matter, final action was taken whereby the Commission approved and received, respectively, the following trade practice rules in Group I and Group II.

THE RULES

DEFINITIONS

For the purposes of these rules and in their application, the following definitions shall apply unless the context otherwise requires:

- (1) The term "product of the industry," as used herein, shall

include the fabric, skein, yarn, or fiber which members of the industry process by dyeing, printing, bleaching, mercerizing, finishing, or other processing, for use, sale, distribution, or marketing by their customers, by so-called cutters-up, or by others, as articles of "commerce," whether in the processed form produced by members of the industry, or in the form of garments or products made therefrom. Such term shall also include the dyeing, printing, bleaching, mercerizing, finishing, or other processing by industry members of such fabric, skein, yarn, or fiber together with the necessary processing materials used to put such industry product in finished form. The term "product of the industry," as used herein, shall not include hosiery or the piece dyeing or processing of hosiery.

(2) The word "commerce" means commerce among the several States or with foreign nations, or in any Territory of the United States or in the District of Columbia, or between any such Territory and another, or between any such Territory and any State or foreign nation, or between the District of Columbia and any State or Territory or foreign nation.

(3) The word "rayon," as used herein, is the generic term for manufactured textile fiber or yarn produced chemically from cellulose or with a cellulose base and for thread, strands, or fabric made therefrom, regardless of whether such fiber or yarn be made under the viscose, acetate, cuprammonium, nitrocellulose, or other process.

GROUP I*

RULE 1. *Misbranding and Misrepresentation.*

The false or deceptive marking or branding of products of the industry, or the making or publishing of any false or deceptive advertisements, statements, or representations, concerning the dyeing, printing, bleaching, finishing, or processing of any products of the industry, or concerning their quality, quantity, weighting, fiber content, or preparation, or in any other material respect, is an unfair trade practice.

RULE 2. *Deceptive Concealment.*

It is an unfair trade practice for any member of the industry to use, or directly or indirectly to assist others in the use of, any deceptive selling method or other deceptive act or practice by concealing or failing to disclose textile content, weighting, and other information required to be disclosed by the Trade Practice Rules for the Rayon and Silk Industries as promulgated by the Federal Trade Commission on October 26, 1937, and November 4, 1938, respectively, or other applicable rules; or by any other means to engage in deceptive selling methods.

* See page VIII for headnote applicable to Group I Rules.

RULE 3. *Substitution of Products.*

The practice of shipping or delivering products which do not conform to samples submitted, or to representations made prior to securing the order, without the consent of the customers to such substitutions, or with the capacity and tendency or effect of misleading or deceiving the purchasing or consuming public, is an unfair trade practice.

RULE 4. *Imitation or Simulation of Trade-marks, Trade Names, Etc.*

The imitation or simulation of the trade-marks, trade names, brands, or labels of competitors, with the tendency and capacity or effect of thereby misleading or deceiving the purchasing or consuming public, is an unfair trade practice.

RULE 5. *Defamation of Competitors.*

The defamation of competitors by falsely imputing to them dishonorable business conduct, inability to perform contracts, questionable credit standing, or by other false representations, is an unfair trade practice.

RULE 6. *Disparagement of Products of Competitors.*

The false disparagement of the grade, quality, quantity, weighting, fiber content, character, or processing of competitors' products or services is an unfair trade practice.

RULE 7. *Commercial Bribery.*

It is an unfair trade practice for a member of the industry, directly or indirectly, to give, or offer to give, or permit or cause to be given, money or anything of value to agents, employees, or representatives of customers or prospective customers, or to agents, employees, or representatives of competitors' customers or prospective customers, without the knowledge of their employers or principals, as an inducement to influence their employers or principals to contract for the processing of goods or products by such industry member or the maker of such gift or offer, or to influence such employers or principals to refrain from dealing with competitors.

RULE 8. *Procurement of Competitors' Confidential Information by Unfair Means and Wrongful Use Thereof.*

Obtaining information concerning the business of a competitor by bribery of an employee or agent of such competitor, by false or misleading statements, by the impersonation of one in authority, or by any other unfair means, and using the information so obtained in such a manner as to injure said competitor in his business or to suppress competition or unreasonably restrain trade, is an unfair trade practice.

RULE 9. *Inducing Breach of Contract.*

Inducing or attempting to induce the breach of existing lawful contracts between competitors and their customers or their suppliers by any false or deceptive means whatsoever, or interfering with or obstructing the performance of any such contractual duties or services by any such means, with the purpose and effect of unduly hampering, injuring, or prejudicing competitors in their businesses, is an unfair trade practice.

RULE 10. *Unlawful Interference.*

It is an unfair trade practice for any member of the industry, by means of any monopolistic practices, or through combination, conspiracy, coercion, boycott, threats, or any other unlawful means, directly or indirectly, to interfere with a competitor's right to purchase his materials and supplies from whomsoever he chooses, or to sell to whomsoever he chooses.

RULE 11. *Unfair Threats of Infringement Suits.*

The circulation of threats of suit for infringement of patents or trade-marks among customers or prospective customers of competitors, not made in good faith but with the effect of intimidating such customers or prospective customers, or of hampering or injuring competitors in their businesses, is an unfair trade practice.

RULE 12. *Coercing Purchase of One Product as a Prerequisite to the Purchase of Other Products.*

The practice of coercing the purchase of one or more products as a prerequisite to the purchase of one or more other products, where the effect may be to substantially lessen competition or tend to create a monopoly or to unreasonably restrain trade, is an unfair trade practice.

RULE 13. *Bogus Independents.*

It is an unfair trade practice to sell or offer to sell industry products through a pretended independent concern in such manner as to mislead or deceive customers or prospective customers into the erroneous belief that such concern is independent and in competition with that member of the industry owning or controlling such concern.

RULE 14. *Selling Below Cost.*

The practice of selling industry products below the seller's cost, when pursued with wrongful intent of thereby injuring a competitor and where the effect of such practice is to unreasonably restrain trade, tend to create a monopoly, or substantially lessen competition, is an unfair trade practice.

This rule is not to be construed as prohibiting all sales below cost, but only such selling below the seller's cost as is resorted to and pursued as a monopolistic practice with the wrongful intent referred to

and coupled with the effect of unreasonably restraining trade, tending to create a monopoly, or substantially lessening competition.

The costs referred to in the rule are actual costs of the respective seller and not some other figure or average costs in the industry determined by an industry cost survey or otherwise.

RULE 15.

(a) *Prohibited Discriminatory Prices, or Rebates, Refunds, Discounts, Credits, Etc., Which Effect Unlawful Price Discrimination.*

It is an unfair trade practice for any member of the industry engaged in commerce,¹ in the course of such commerce, to grant or allow, secretly or openly, directly or indirectly, any rebate, refund, discount, credit, allowance for alleged imperfect workmanship after material has been cut, or other form of price differential, where such rebate, refund, discount, credit, allowance for alleged imperfect workmanship, or other form of price differential, effects a discrimination in price between different purchasers of commodities of like grade and quality, where either or any of the purchases involved therein are in commerce,¹ and where the effect thereof may be substantially to lessen competition or tend to create a monopoly in any line of commerce,¹ or to injure, destroy, or prevent competition with any person who either grants or knowingly receives the benefit of such discrimination, or with customers of either of them: *Provided, however—*

(1) That the goods involved in any such transaction are sold for use, consumption, or resale within any place under the jurisdiction of the United States;

(2) That nothing herein contained shall prevent differentials which make only due allowance for differences in the cost of manufacture, sale, or delivery resulting from the differing methods or quantities in which such commodities are to such purchasers sold or delivered;

(3) That nothing herein contained shall prevent persons engaged in selling goods, wares, or merchandise in commerce¹ from selecting their own customers in bona fide transactions and not in restraint of trade;

(4) That nothing herein contained shall prevent price changes from time to time where made in response to changing conditions affecting either (a) the market for the goods concerned, or (b) the marketability of the goods, such as, but not limited to, actual or imminent deterioration of perishable goods, obsolescence of seasonal goods, distress sales under court process, or sales in good faith in discontinuance of business in the goods concerned.

(b) *Prohibited Brokerage and Commissions.*—It is an unfair trade

¹ See footnote, p. 460.

practice for any member of the industry engaged in commerce,¹ in the course of such commerce, to pay or grant, or to receive or accept, anything of value as a commission, brokerage, or other compensation, or any allowance or discount in lieu thereof, except for services rendered in connection with the sale or purchase of goods, wares, or merchandise, either to the other party to such transaction or to an agent, representative, or other intermediary therein where such intermediary is acting in fact for or in behalf, or is subject to the direct or indirect control, of any party to such transaction other than the person by whom such compensation is so granted or paid.

(c) *Prohibited Advertising or Promotional Allowances, Etc.*—It is an unfair trade practice for any member of the industry engaged in commerce¹ to pay or contract for the payment of advertising or promotional allowances or any other thing of value to or for the benefit of a customer of such member in the course of such commerce as compensation or in consideration for any services or facilities furnished by or through such customer in connection with the processing, handling, sale, or offering for sale of any products or commodities manufactured, sold, or offered for sale by such member, unless such payment or consideration is available on proportionally equal terms to all other customers competing in the distribution of such products or commodities.

(d) *Prohibited Discriminatory Services or Facilities.*—It is an unfair trade practice for any member of the industry engaged in commerce¹ to discriminate in favor of one purchaser against another purchaser or purchasers of a commodity bought for resale, with or without processing, by contracting to furnish or furnishing, or by contributing to the furnishing of, any services or facilities connected with the processing, handling, sale, or offering for sale, of such commodity so purchased upon terms not accorded to all purchasers on proportionally equal terms.

(e) *Inducing or Receiving an Illegal Discrimination in Price.*—It is an unfair trade practice for any member of the industry engaged in commerce,¹ in the course of such commerce, knowingly to induce or receive a discrimination in price which is prohibited by the foregoing provisions of this Rule 15.

(f) *Purchases by Schools, Colleges, Universities, Public Libraries, Churches, Hospitals, and Charitable Institutions Not Operated for Profit.*—The foregoing provisions of this Rule 15 relate to practices within the purview of the Robinson-Patman Antidiscrimination Act, which Act and the application thereunder of this Rule 15 are subject to the limitations expressed in the amendment to such Robinson-Patman Antidiscrimination Act, which amendment was approved May 26, 1938, and reads as follows:

¹ See footnote, p. 460.

"Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That nothing in the Act approved June 19, 1936 (Public, Numbered 692, Seventy-fourth Congress, second session), known as the Robinson-Patnam Antidiscrimination Act, shall apply to purchases of their supplies for their own use by schools, colleges, universities, public libraries, churches, hospitals, and charitable institutions not operated for profit." (52 Stat. 446; Supp. 4 U. S. C. Title 15, Sec. 13c.)

RULE 16. "End Piece Pilfering," False Invoicing, Etc.

(a) In the course of or in connection with conduct of business by any member of the industry involving the sale of, or contract to furnish, products of the industry to his customers, it is an unfair trade practice for any such member to use the device or scheme of false invoicing or of so-called end piece pilfering or of any other device or scheme characterized by deception or fraud.

(b) For purposes of this rule, end piece pilfering shall mean the pilfering, purloining, or unauthorized conversion to his own use, by any member of the industry, of fabrics or yarn, or pieces thereof, belonging to his customers and bailed to such member for dyeing, printing, finishing, bleaching, or other processing.

GROUP II*

RULE A. Repudiation of Contracts.

Lawful contracts are business obligations which should be performed in letter and in spirit. The repudiation of contracts by sellers on a rising market or by buyers on a declining market is condemned by the industry.

RULE B. Cost Records.

It is the judgment of the industry that each member should independently keep proper and accurate records for determining his costs.

RULE C. Arbitration.

The industry approves the practice of handling business disputes between members of the industry and their customers in a fair and reasonable manner, coupled with a spirit of moderation and good will, and every effort should be made by the disputants themselves to compose their differences. If unable to do so they should, if possible, submit these disputes to arbitration.

Promulgated by the Federal Trade Commission December 12, 1941.

* See page VIII for headnote applicable to Group II Rules.

TRADE PRACTICE RULES

FOR THE

SUN GLASS INDUSTRY

PROMULGATED DECEMBER 23, 1941

STATEMENT BY THE COMMISSION

Trade Practice rules for the Sun Glass Industry, as hereinafter set forth, are promulgated by the Federal Trade Commission under its trade practice conference procedure.

The rules are directed to the elimination and prevention of misrepresentation, deceptive concealment, and various other unfair trade practices, and are established in the interest of safeguarding industry, trade, and the buying public from the harmful effects thereof. Products of the industry consist of sun glasses and other glasses and lenses which are used to provide protection for the eyes against sun glare, strong light, or other similar conditions. Such glasses or lenses are not eye-corrective, but eye-protective, devices. Frames or parts for the glasses are also included among the products of the industry.

The rules relate to the sale or distribution of the products generally, whether by manufacturers, importers, jobbers, distributors, dealers, or other marketers. Volume of business of the manufacturers is reported as aggregating \$4,000,000 a year. The glasses are marketed in various channels of trade, reaching the public largely through retail drugstores, tobacco shops, limited price variety stores, and many other retail establishments.

Proceedings for the establishment of trade practice rules were instituted upon application of the industry. Such proceedings included the holding of a general trade practice conference of the whole industry, the submission and consideration of proposed rules, and of briefs, memoranda and other presentations regarding the matter, together with public hearing at which all interested or affected parties were afforded opportunity to present their views to the Commission, including such pertinent information, suggestions or objections as they desired to submit.

Thereafter, and upon full consideration by the Commission of the entire matter, final action was taken whereby the Commission approved the following trade practice rules in Group I.

THE RULES

GROUP I*

RULE 1. *Misbranding of Industry Products.*

The false or deceptive marking, branding, or labeling of any product of the industry with respect to the grade, quality, use, effect, purpose, material, content, origin, preparation, manufacture, or distribution of such product, or concerning any component thereof, or in any other material respect, is an unfair trade practice.

RULE 2. *Misuse of Terms "Ground," "Polished," and "Ground and Polished."*

(a) In the course of or in connection with the sale or distribution of sun glasses or sun glass lenses which have not been ground and polished as hereinafter defined, it is an unfair trade practice to mark, stamp, brand, label, advertise, describe, or otherwise represent, such sun glasses or sun glass lenses as "ground," "polished," or "ground and polished," or by words or representations of similar import or meaning, with the capacity and tendency or effect of thereby misleading or deceiving the purchasing or consuming public.

(b) For purposes of this rule a ground and polished lens (as applied to sun glasses) is a lens of which both optical surfaces have first been completely removed with an abrasive to eliminate surface imperfections and to obtain the desired form for the lens (e. g., flat, spherical, toric, etc.) and then polished so as to produce an optical finish which is free from visible surface defects, such as scratches, waves, and grayness.

RULE 3. *Misuse of the Word "Crookes."*

It is an unfair trade practice, in the sale or distribution of sun glasses or sun glass lenses, to mark, stamp, brand, label, advertise, describe, or otherwise represent, such sun glasses or lenses as being "Crookes" when such is not true in fact; or to use the word "Crookes" or other words or representations in any manner as to import or imply that the lenses to which such marks, words, or representations are applied are "Crookes" lenses when such is not true in fact.

Definition: For purposes of these rules a "Crookes" lens is defined as a nearly neutral colored ultra-violet absorption glass which contains sufficient crude cerium and/or rare earths to reduce the ultra-violet transmission at a thickness of 2.0 mm. to not more than 1% at 334 mμ., and also at this thickness to have prominent didymium absorption bands in the yellow region of the spectrum. For sun glasses the visual transmission shall be not more than 67%, but may vary within this limitation according to the desired shade.

* See page VIII for headnote applicable to Group I Rules.

RULE 4. Other Misrepresentations of Industry Products.

It is an unfair trade practice to make or publish, or cause to be made or published, directly or indirectly, any false, misleading, or deceptive statement or representation, by way of advertisement or otherwise, concerning the grade, quality, use, effect, purpose, material, content, origin, preparation, manufacture, or distribution of any products of the industry, or any component thereof, or in any other material respect.

RULE 5. Defamation of Competitors or Disparagement of Their Products.

The defamation of competitors by falsely imputing to them dishonorable conduct, inability to perform contracts, questionable credit standing, or by other false representations, or the false disparagement of the grade, quality, or manufacture of the products of competitors, or of their business methods, selling prices, values, credit terms, policies, or services, is an unfair trade practice.

RULE 6. Consignment Distribution.

It is an unfair trade practice for any member of the industry to employ the practice of shipping industry products on consignment or pretended consignment for the purpose and with the effect of artificially clogging or closing trade outlets and unduly restricting competitors' use of said trade outlets in getting their products to consumers through regular channels of distribution, thereby injuring, destroying, or preventing competition or tending to create a monopoly or to unreasonably restrain trade. Nothing in this rule shall be construed as restricting or preventing consignment shipping or marketing of industry products in good faith where suppression of competition, restraint of trade, or undue interference with competitors' use of the usual channels of distribution, is not effected.

RULE 7. Deception as to Origin.

In respect to sun glasses having lenses made from glass produced in a foreign country and (1) imported in the finished state, or (2) imported in the unfinished state and finished in the United States, it is an unfair trade practice:

(a) To offer for sale, sell, or distribute any such sun glasses under marks, stamps, brands, labels, or representations which have the capacity and tendency or effect of misleading or deceiving purchasers or the consuming public into the erroneous belief that the sun glasses or the lenses thereof were produced wholly within the United States; or

(b) To offer for sale, sell, or distribute any such sun glasses without the same being marked, stamped, branded, or labeled so as to indicate clearly and nondeceptively the country of origin

of such lenses, the failure, refusal, or omission to so mark, stamp, brand, or label such sun glasses having the capacity and tendency or result of thereby promoting, abetting, or effectuating the marketing of the sun glasses under conditions which are misleading or deceptive to purchasers or the consuming public.

(Nothing in this rule shall be construed as relieving any member of the industry or other party of the necessity of complying with the requirements of the customs laws or regulations, or other applicable provisions of law or regulation, relating to the marking of imported articles.)

RULE 8.

(a) Prohibited Discriminatory Prices, or Rebates, Refunds, Discounts, Credits, Etc., Which Effect Unlawful Price Discrimination.—

It is an unfair trade practice for any member of the industry engaged in commerce,¹ in the course of such commerce, to grant or allow, secretly or openly, directly or indirectly, any rebate, refund, discount, credit, or other form of price differential, where such rebate, refund, discount, credit, or other form of price differential, effects a discrimination in price between different purchasers of goods of like grade and quality, where either or any of the purchases involved therein are in commerce,¹ and where the effect thereof may be substantially to lessen competition or tend to create a monopoly in any line of commerce,¹ or to injure, destroy, or prevent competition with any person who either grants or knowingly receives the benefit of such discrimination, or with customers of either of them: *Provided, however—*

(1) That the goods involved in any such transaction are sold for use, consumption, or resale within any place under the jurisdiction of the United States;

(2) That nothing herein contained shall prevent differentials which make only due allowance for differences in the cost of manufacture, sale, or delivery resulting from the differing methods or quantities in which such commodities are to such purchasers sold or delivered;

(3) That nothing herein contained shall prevent persons engaged in selling goods, wares, or merchandise in commerce¹ from selecting their own customers in bona fide transactions and not in restraint of trade;

(4) That nothing herein contained shall prevent price changes from time to time where made in response to changing conditions affecting either (a) the market for the goods concerned, or (b) the marketability of the goods, such as, but not limited to, actual or imminent deterioration of perishable goods, obsolescence of sea-

¹ See footnote, p. 460.

sonal goods, distress sales under court process, or sales in good faith in discontinuance of business in the goods concerned.

(b) *Prohibited Brokerage and Commissions.*—It is an unfair trade practice for any member of the industry engaged in commerce,¹ in the course of such commerce, to pay or grant, or to receive or accept, anything of value as a commission, brokerage, or other compensation, or any allowance or discount in lieu thereof, except for services rendered in connection with the sale or purchase of goods, wares, or merchandise, either to the other party to such transaction or to an agent, representative, or other intermediary therein where such intermediary is acting in fact for or in behalf, or is subject to the direct or indirect control, of any party to such transaction other than the person by whom such compensation is so granted or paid.

(c) *Prohibited Advertising or Promotional Allowances, Etc.*—It is an unfair trade practice for any member of the industry engaged in commerce¹ to pay or contract for the payment of advertising or promotional allowances or any other thing of value to or for the benefit of a customer of such member in the course of such commerce as compensation or in consideration for any services or facilities furnished by or through such customer in connection with the processing, handling, sale, or offering for sale of any products or commodities manufactured, sold, or offered for sale by such member, unless such payment or consideration is available on proportionally equal terms to all other customers competing in the distribution of such products or commodities.

(d) *Prohibited Discriminatory Services or Facilities.*—It is an unfair trade practice for any member of the industry engaged in commerce¹ to discriminate in favor of one purchaser against another purchaser or purchasers of a commodity bought for resale, with or without processing, by contracting to furnish or furnishing, or by contributing to the furnishing of, any services or facilities connected with the processing, handling, sale, or offering for sale, of such commodity so purchased upon terms not accorded to all purchasers on proportionally equal terms.

(e) *Inducing or Receiving an Illegal Discrimination in Price.*—It is an unfair trade practice for any member of the industry engaged in commerce,¹ in the course of such commerce, knowingly to induce or receive a discrimination in price which is prohibited by the foregoing provisions of this Rule 8.

(f) *Purchases by Schools, Colleges, Universities, Public Libraries, Churches, Hospitals, and Charitable Institutions Not Operated for Profit.*—The foregoing provisions of this Rule 8 relate to practices within the purview of the Robinson-Patman Antidiscrimination Act,

¹ See footnote, p. 460.

which Act and the application thereunder of this Rule 8 are subject to the limitations expressed in the amendment to such Robinson-Patman Antidiscrimination Act, which amendment was approved May 26, 1938, and reads as follows:

"Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That nothing in the Act approved June 19, 1936 (Public, Numbered 692, Seventy-fourth Congress, second session), known as the Robinson-Patman Antidiscrimination Act, shall apply to purchases of their supplies for their own use by schools, colleges, universities, public libraries, churches, hospitals, and charitable institutions not operated for profit." (52 Stat. 446; Supp. 4 U. S. C. Title 15, Sec. 13c.)

RULE 9. *Discriminatory Returns.*

It is an unfair trade practice for any member of the industry, engaged in commerce,¹ to discriminate in favor of one customer-purchaser against another customer-purchaser of the products of this industry, bought from such member of the industry for resale, by contracting to furnish or furnishing in connection therewith, upon terms not accorded to all customer-purchasers on proportionally equal terms, the service or facility whereby such favored purchaser is accorded the privilege of returning industry products so purchased and receiving therefor credit or refund of purchase price; provided, however, nothing in any of the rules herein shall prohibit or be used to prevent the return of merchandise by purchaser, for credit or refund of purchase price, when and because such merchandise has been falsely or deceptively labeled or represented, or when and because such merchandise is defective in material, workmanship, or in any other respect contrary to warranty or purchase contract.

Promulgated by the Federal Trade Commission December 23, 1941.

¹ See footnote, p. 460.

TRADE PRACTICE RULES

FOR THE

RIBBON INDUSTRY

PROMULGATED JUNE 30, 1942

STATEMENT BY THE COMMISSION

Trade practice rules for the Ribbon Industry as extended by certain additional provisions are promulgated by the Federal Trade Commission and are hereinbelow set forth.

The rules previously issued for this industry on June 28, 1939, are continued without textual change, but with the additional provisions incorporated. New rules added are numbered 16, 17, and 18, and relate to the labeling of "seconds;" to the use of a warranty statement concerning the marking of yardage and fiber content of ribbon product; and to the prevention of such intermingling of "cut-edge" and "woven-edge" ribbons as may be confusing or deceptive to purchasers. Paragraph (f) of Rule 13 has also been added and explanatory notes revised where necessary.

More adequate consumer protection and maintenance of fair competitive methods in the industry are primary objectives of the rules.

Ribbons of various kinds, which are the products of the industry, are manufactured and marketed for many different uses. They are sold, directly or through jobbers, to manufacturers of millinery, footwear, and wearing apparel for use as trimming and for other purposes; to manufacturers of candy, greeting cards, and many other products for use in connection with the manufacture and distribution of such merchandise; and to merchants for use in the wrapping and decorating of gifts and numerous other articles. Ribbons are also marketed at retail through department stores, drygoods stores, and other dealer outlets for use by the general consuming public. The annual volume of sales of the manufacturing branch of the industry aggregates approximately \$16,000,000, according to present available information.

Establishment of the rules was effected upon application of members of the industry under the Commission's trade practice conference procedure. The proceedings included the holding of an industry conference and public hearings at which all members of the industry, and all other interested or affected parties, were afforded opportunity to submit their views and to be heard.

Upon due consideration the rules appearing in Group I and Group II were respectively approved and received by the Commission.

THE RULES

(NOTE.—The rules do not supplant, or relieve any member of the industry or other party of the necessity of complying with, such applicable fiber identification rules and other pertinent Group I rules as have been or may be approved and promulgated by the Federal Trade Commission.)

DEFINITION

The term "ribbon" or "ribbons" as herein used shall be construed for purposes of these rules as embracing all those narrow fabrics technically classified or known as ribbons, also all other products marketed by members of the industry, whether domestic or imported, which have the appearance of ribbons and are used for the same or similar purposes, including so-called "cut-edge" ribbons and "pasted-back" ribbons.

GROUP I*

RULE 1. *Misbranding of Industry Products.*

The false or deceptive marking or branding of ribbons with respect to the grade, quality, yardage, size, use, colorfastness, content, origin, construction, fabrication, manufacture or distribution thereof, or in any other material respect, is an unfair trade practice.

RULE 2. *Misrepresentation of Industry Products.*

It is an unfair trade practice to make or publish or cause to be made or published, directly or indirectly, any false, misleading or deceptive statement, representation, guarantee or warranty, by way of advertisement or otherwise, concerning the grade, quality, yardage, size, use, colorfastness, content, origin, construction, fabrication, manufacture or distribution of any ribbon, or in any other material respect.

RULE 3. *Misrepresentation as to Character of Business.*

It is an unfair trade practice for any member of the industry to represent, directly or indirectly, through the use of the word "mill" or "mills," or any other word or term of similar import or meaning, in his or its corporate or trade name, or otherwise, that he or it is a manufacturer of ribbons or that he or it is the owner or operator of a mill or producing company manufacturing ribbons, when such is not the fact, or in any other manner to misrepresent the character, extent or type of his or its business.

RULE 4. *False Invoicing.*

Withholding from or inserting in invoices or sales tickets any statements or information by reason of which omission or insertion a false record is made, wholly or in part, of the transactions represented on

* See page VIII for headnote applicable to Group I Rules.

the face of such invoices or sales tickets, with the effect of thereby misleading or deceiving purchasers or the consuming public, is an unfair trade practice.

RULE 5. Defamation of Competitors or Disparagement of Their Products.

The defamation of competitors by falsely imputing to them dishonorable conduct, inability to perform contracts, questionable credit standing, or by other false representations, or the false disparagement of the grade, quality or manufacture of the products of competitors or of their business methods, selling prices, values, credit terms, policies or services, is an unfair trade practice.

RULE 6. Commercial Bribery.

It is an unfair trade practice for a member of the industry directly or indirectly to give, or offer to give, or permit or cause to be given, money or anything of value to agents, employees or representatives of customers or prospective customers, or to agents, employees or representatives of competitors' customers or prospective customers, without the knowledge of their employers or principals, as an inducement to influence their employers or principals to purchase or contract to purchase ribbons manufactured or sold by such industry member or the maker of such gift or offer, or to influence such employers or principals to refrain from dealing in the products of competitors or from dealing or contracting to deal with competitors.

RULE 7. Imitation or Simulation of Trade-marks, Trade Names, Etc.

The imitation or simulation of the trade-marks, trade names, brands or labels of competitors, or of the exclusively owned patterns of competitors which have not been directly or by operation of law dedicated to the public, with the tendency and capacity or effect of misleading or deceiving purchasers or the consuming public, is an unfair trade practice.

RULE 8. Circulation of Threats of Suit.

The circulation of threats of suit for infringement of patents or trade-marks among customers or prospective customers of competitors, not made in good faith but for the purpose or with the effect of harassing or intimidating such customers or prospective customers, or of unduly hampering, injuring or prejudicing competitors in their businesses, is an unfair trade practice.

RULE 9. Consignment Selling.

It is an unfair trade practice for any member of the industry to use the practice of shipping goods on consignment or pretended consignment for the purpose and with the effect of artificially clogging trade outlets and unduly restricting competitors' use of said trade outlets in

getting their goods to consumers through regular channels of distribution, or with such purpose to entirely close said trade outlets to such competitors so as to substantially lessen competition or tend to create a monopoly or to unreasonably restrain trade; *provided, however*, that nothing herein shall be construed or used as restricting or preventing consignment shipping or marketing of commodities in good faith and without artificial interference with competitors' use of the usual channels of distribution in such manner as thereby to suppress competition or restrain trade.

RULE 10. Deception as to Origin.

In respect to any ribbons of the following types, (1) ribbons which have been woven or fabricated in a foreign country and imported in the greige or other unfinished state and dyed or finished in the United States; or (2) ribbons which have been imported in the finished state and redyed or refinished in the United States; or (3) ribbons which have been made from fabric which has been woven or fabricated in a foreign country and imported either in the greige or unfinished state or in the dyed or finished state, *it is an unfair trade practice*:

(a) To offer for sale, sell or distribute any such ribbons under marks, stamps, brands, labels or representations which have the capacity and tendency or effect of misleading or deceiving purchasers or the consuming public into the erroneous belief that such ribbons or the fabrics thereof were woven or fabricated in the United States, or that they were not so dyed, finished, redyed or refinished in the United States, as the case may be; or

(b) To offer for sale, sell or distribute any such ribbons without the same being marked, stamped, branded or labeled so as to indicate clearly and nondeceptively (1) the country of origin of the fabric, and (2) that the ribbons were woven or fabricated in such country and were dyed or finished or redyed or refinished in the United States, as the case may be; the failure, refusal or omission to so mark, stamp, brand or label such ribbons having the tendency and capacity or result of thereby promoting, abetting or effectuating the marketing of the ribbons under conditions which are misleading or deceptive to purchasers or the consuming public.

(Nothing in this rule shall be construed as relieving any member of the industry or other party of the necessity of complying with the requirements of the customs laws or regulations, or other applicable provisions of law or regulation, relating to the marking of imported articles.)

RULE 11. Disclosure of Yardage.

In order that purchasers may not be deceived as to the yardage of ribbons and that misrepresentation and deceptive concealment in re-

spect thereto may be avoided and prevented, the minimum yardage of the article should be clearly and nondeceptively marked on the product or on the spools, bolts, cards or other immediate packaging of the product; and the sale, offer for sale or distribution of any ribbons not so marked, with the tendency and capacity or effect of misleading or deceiving purchasers or the consuming public, is an unfair trade practice.¹

RULE 12. "Cut-Edge" and "Pasted-Back" Products.

To the end that purchasers may have adequate information concerning the following types of industry products, and that confusion, misrepresentation and deception may be avoided and prevented, the spool, bolt, card or other form of immediate packaging of such products should be clearly and nondeceptively marked in the following manner:

(a) Ribbons having cut, and not woven, edges should be marked or labeled with the words "cut-edge," or with word or words of similar import or meaning.

(b) Ribbons made by the adhesion of separate layers of fabric should be marked or labeled with such appropriate word or words as will adequately disclose that such products are so made, as for example, "pasted-back."

(c) Ribbon products which are both "cut-edge" and "pasted-back" are subject to the disclosure requirements of both paragraphs (a) and (b) of this rule.

It is an unfair trade practice to cause any such product to be offered for sale, sold or distributed without being so marked or labeled, with the tendency and capacity or effect of thereby misleading or deceiving purchasers or the consuming public.

(Nothing in this rule shall be construed, however, as preventing the use of the word "ribbon" or "ribbons" in properly describing such products of the industry, *provided* that the words "cut-edge" and/or "pasted-back" or other appropriate term are set forth in immediate conjunction therewith, and with at least equal prominence, conspicuousness and emphasis, as for example, "Cut-Edge Ribbon," "Pasted-Back Ribbon," or "Cut-Edge Pasted-Back Ribbon.")

RULE 13.

(a) *Prohibited Discriminatory Prices, or Rebates, Refunds, Discounts, Credits, Etc., Which Effect Unlawful Price Discrimination.*—It is an unfair trade practice for any member of the industry engaged

¹ Note: In cutting industry products in the greige or after finishing, adequate allowance should be made for the subsequent shrinkage and/or contraction of such products, to the end that purchasers may be assured the full yardage represented.

in commerce,² in the course of such commerce, to grant or allow, secretly or openly, directly or indirectly, any rebate, refund, discount, credit, or other form of price differential, where such rebate, refund, discount, credit, or other form of price differential, effects a discrimination in price between different purchasers of goods of like grade and quality, where either or any of the purchases involved therein are in commerce,² and where the effect thereof may be substantially to lessen competition or tend to create a monopoly in any line of commerce,² or to injure, destroy, or prevent competition with any person who either grants or knowingly receives the benefit of such discrimination, or with customers of either of them: *Provided, however*—

(1) That the goods involved in any such transaction are sold for use, consumption, or resale within any place under the jurisdiction of the United States;

(2) That nothing herein contained shall prevent differentials which make only due allowance for differences in the cost of manufacture, sale, or delivery resulting from the differing methods or quantities in which such commodities are to such purchasers sold or delivered;

(3) That nothing herein contained shall prevent persons engaged in selling goods, wares, or merchandise in commerce² from selecting their own customers in bona fide transactions and not in restraint of trade;

(4) That nothing herein contained shall prevent price changes from time to time where made in response to changing conditions affecting either (a) the market for the goods concerned, or (b) the marketability of the goods, such as, but not limited to, actual or imminent deterioration of perishable goods, obsolescence of seasonal goods, distress sales under court process, or sales in good faith in discontinuance of business in the goods concerned.

(b) *Prohibited Brokerage and Commissions.*—It is an unfair trade practice for any member of the industry engaged in commerce,² in the course of such commerce, to pay or grant, or to receive or accept, anything of value as a commission, brokerage, or other compensation, or any allowance or discount in lieu thereof, except for services rendered in connection with the sale or purchase of goods, wares, or merchandise, either to the other party to such transaction or to an agent, representative, or other intermediary therein where such intermediary is acting in fact for or in behalf, or is subject to the direct or indirect control, of any party to such transaction other than the person by whom such compensation is so granted or paid.

(c) *Prohibited Advertising or Promotional Allowances, Etc.*—It is

² See footnote, p. 460.

an unfair trade practice for any member of the industry engaged in commerce² to pay or contract for the payment of advertising or promotional allowances or any other thing of value to or for the benefit of a customer of such member in the course of such commerce as compensation or in consideration for any services or facilities furnished by or through such customer in connection with the processing, handling, sale, or offering for sale of any products or commodities manufactured, sold, or offered for sale by such member, unless such payment or consideration is available on proportionally equal terms to all other customers competing in the distribution of such products or commodities.

(d) *Prohibited Discriminatory Services or Facilities.*—It is an unfair trade practice for any member of the industry engaged in commerce² to discriminate in favor of one purchaser against another purchaser or purchasers of a commodity bought for resale, with or without processing, by contracting to furnish or furnishing, or by contributing to the furnishing of, any services or facilities connected with the processing, handling, sale, or offering for sale of such commodity so purchased upon terms not accorded to all purchasers on proportionally equal terms.

(e) *Inducing or Receiving an Illegal Discrimination in Price.*—It is an unfair trade practice for any member of the industry engaged in commerce,² in the course of such commerce, knowingly to induce or receive a discrimination in price which is prohibited by the foregoing provisions of this Rule 13.

(f) *Purchases by Schools, Colleges, Universities, Public Libraries, Churches, Hospitals, and Charitable Institutions Not Operated for Profit.*—The foregoing provisions of this Rule 13 relate to practices within the purview of the Robinson-Patman Antidiscrimination Act, which Act and the application thereunder of this Rule 13 are subject to the limitations expressed in the amendment to such Robinson-Patman Antidiscrimination Act, which amendment was approved May 26, 1938, and reads as follows:

"Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That nothing in the Act approved June 19, 1936 (Public, Numbered 692, Seventy-fourth Congress, second session), known as the Robinson-Patman Antidiscrimination Act, shall apply to purchases of their supplies for their own use by schools, colleges, universities, public libraries, churches, hospitals, and charitable institutions not operated for profit." (52 Stat. 446; Supp. 4 U. S. C. Title 15, Sec. 13c.)

² See footnote, p. 460.

RULE 14. *Discriminatory Returns.*

It is an unfair trade practice for any member of the industry engaged in commerce² to discriminate in favor of one customer-purchaser against another customer-purchaser of ribbons, bought from such member of the industry for resale, by contracting to furnish or furnishing in connection therewith, *upon terms not accorded to all customer-purchasers on proportionally equal terms*, the service or facility whereby such favored purchaser is accorded the privilege of returning ribbons so purchased and receiving therefor credit or refund of purchase price: *Provided, however*, nothing in any of the rules herein shall prohibit or be used to prevent the return of merchandise by purchaser, for credit or refund of purchase price, when and because such merchandise has not been properly labeled by the seller as to fiber content, or has been otherwise falsely or deceptively labeled or represented, or when and because such merchandise is defective in material, workmanship, or in any other respect contrary to warranty or purchase contract.

RULE 15. *Fiber Identification of Product.*

Identification and disclosure of fiber and other material content of the products of this industry shall be made in accordance with the applicable requirements of the Group I fiber identification rules approved and promulgated by the Commission, such as the Group I Rayon Rules promulgated October 26, 1937, relating to products containing rayon in whole or in part, and the Group I Silk Rules promulgated November 4, 1938, relating to products containing or purporting to contain silk in whole or in part, and such other provisions of laws and regulations on the subject as or when made applicable to the products of this industry.

RULE 16. *Warranty Statement in Invoices.**

(a) In respect to disclosure of fiber content in invoices, if, because of a multiplicity of items of different fiber composition, it is not feasible to have the fiber content of the different numbers or items set out on the face or back of the invoice or otherwise specifically listed therein, a statement in lieu of such specific listing of fiber content in the invoice may be set forth therein to the effect that the seller warrants each and every item coming under these rules and covered by such invoice to be properly marked and labeled as to content in full conformity with the provisions of applicable trade practice rules, *provided* such products are labeled and marked properly as to fiber content, yardage, and in such other respects as required by these rules, and *provided further* that no false or misleading designations or representations are used,

² See footnote, p. 460.

* Added to rules for the industry June 30, 1942.

nor any other deception, direct or indirect, is practiced in or by means of such invoice.

(b) The following is an example of such warranty statement which may be used under this rule when the foregoing conditions are met:

The seller hereby warrants that the ribbons covered by this invoice are clearly and truthfully labeled and marked as to fiber content and yardage. Truthful labels or marks disclosing such information should not be removed or concealed.

(c) In invoices covering any ribbons which are "cut-edge," or "pasted-back," or "seconds," the warranty statement in the invoice under this rule shall also include a warranty that the ribbons are properly marked in these respects, as for example:

The seller hereby warrants that the ribbons covered by this invoice are clearly and truthfully labeled and marked as to fiber content and yardage, and as to their being "cut-edge," "pasted-back," or "seconds," where such is the fact. Truthful labels or marks disclosing such information should not be removed or concealed.

(Nothing in this rule shall be construed as providing for the omission of disclosure in the invoice of yardage or of the fact that products are "cut-edge," "pasted-back," or "seconds," as the case may be.)

RULE 17. *Seconds.**

(a) Ribbons which are, or are represented as being, "Seconds" should be marked "Seconds."

(b) For purposes of this rule, "Seconds" shall be considered as including all ribbons which are defective by reason of containing flaws, irregularities, or imperfections, in material, construction or finish, or which are otherwise not of first quality.

(c) The marking provided for in this rule shall be made in a conspicuous and nondeceptive manner on the spool, bolt, card, or other form of immediate packaging of the ribbons, or on the ribbons themselves, whichever method of marking is appropriate under the circumstances, and with sufficient permanency as to carry through the channels of trade to the ultimate consumer in clearly legible condition. Letters which are of full face type and at least $\frac{1}{4}$ inch in height may be used for this purpose.

(d) It is an unfair trade practice to fail or refuse to make the disclosure provided for in this rule in respect of ribbons which are "Seconds," or to fail or refuse to disclose the presence in ribbon products of any cuts, tears, burns, or that the product is otherwise damaged, with

* Added to rules for the industry June 30, 1942.

the capacity and tendency or effect of thereby misleading or deceiving the purchasing or consuming public.

RULE 18. *Promoting the Use of Deceptive Marketing Methods in the Sale of Cut-Edge Ribbon Products.**

In the course of, or in connection with, the marketing, offering for sale, sale, or distribution of ribbon products in the trade and to the consuming public, it is an unfair trade practice, directly or indirectly, to cause, aid, abet, or promote the display, offering for sale, or sale of "cut-edge" ribbon products, through any means or device, or under any conditions or circumstances, which have the capacity and tendency or effect of misleading or deceiving the purchasing or consuming public; as for example,

(1) By using the device of removing "cut-edge" ribbon products from their packages and displaying them for sale in retail stores without mark or sign plainly informing the purchaser that such products are "cut-edge," with the capacity and tendency or effect referred to above; or

(2) By using the device of intermingling "cut-edge" and "woven-edge" ribbons in such manner as to mislead or deceive the purchasing public; or

(3) By using any other means or device which involves the deceptive concealment or nondisclosure of the fact that such ribbon products are "cut-edge," with the deceptive capacity and tendency or effect mentioned.

(NOTE.—To promote and facilitate observance of this rule, it is deemed proper practice for manufacturers and others marketing "cut-edge" ribbon products for resale in retail stores to supply their customers with counter markers and signs clearly indicating that the ribbon products displayed at such counters are "cut-edge" and to otherwise assist in making such disclosure and segregation as is necessary to avoid deception and to fully inform the purchasing public.)

GROUP II**

RULE A. *Return of Merchandise.*

The practice, by members of the industry, of selling ribbons and later permitting the purchaser to return the same for credit or refund of purchase price, without just cause, creates waste and loss, increases the cost of doing business to the detriment of both the industry and the public, and is condemned by the industry, subject, however, to requirements and limitations set forth in the provisions of Rule 14 of Group I. herein, and subject also to the general limitation that members of the

* Added to rules for the industry June 30, 1942.

** See page VIII for headnote applicable to Group II Rules.

industry shall not engage in any combination or conspiracy in restraint of trade or use any other illegal methods in the regulation, control or prevention of the return of merchandise.

RULE B. Maintenance of Accurate Records.

It is the judgment of the industry that each member should independently keep proper and accurate records for determining his costs.

A Committee on Trade Practices is hereby created by the industry to cooperate with the Federal Trade Commission and to perform such acts as may be legal and proper to put these rules into effect.

Promulgated by the Federal Trade Commission June 30, 1942.

TRADE PRACTICE RULES

FOR THE

CATALOG JEWELRY AND GIFTWARE INDUSTRY

PROMULGATED DECEMBER 23, 1943

STATEMENT BY THE COMMISSION

Trade practice rules for the Catalog Jewelry and Giftware Industry, as hereinafter set forth, are promulgated by the Federal Trade Commission under its trade practice conference procedure.

The rules are directed to the prevention of various unfair competitive methods or practices and the protection of industry, trade, and the public from their harmful effects.

Products marketed by members of the industry are of great variety. Included therein are jewelry of all kinds, silverware, watches, clocks, novelties, toilet goods, luggage, electrical appliances, furniture, sporting goods or equipment, and miscellaneous items of consumer goods. The annual volume of business is reported as aggregating in normal times as much as \$200,000,000.

Catalogs issued by the members are distributed in various ways. They are supplied by such catalog houses to hardware, drug, and general merchandise stores, and to other retail outlets, in small communities and elsewhere, to be used by such stores and outlets as so-called counter-salesmen or for display, regularly or occasionally, to consumer-purchasers, and from which sales may be made. Such purchasers select articles from the catalog and the dealer then buys from the catalog house the respective items of the consumer's selection. Industry membership also includes those who distribute their catalogs of this character to industrial concerns and to buying organizations for the convenience or use of employees or members of such concerns or organizations in purchasing merchandise direct from the catalog houses, or through such industrial concerns, buying organizations, their officers or others acting as intermediaries. In some instances, industry members distribute their catalogs to individuals or concerns who themselves may be prospective purchasers or who may make the catalogs available to other prospective purchasers for the purpose of making selections and purchases of products offered by the catalog house.

In the catalogs, with but few exceptions, net consumer prices of the respective articles offered for sale are not shown or specified, but code numbers or so-called list prices or catalog figures or other methods are usually used for enabling dealers or persons having special knowledge

to learn what the catalog house's price actually is and to what extent it differs from such price figures as are listed in the catalog.

The above does not include catalogs issued by manufacturers or distributors to members of the trade only for use in making purchases of their stock in trade and which, although not carrying net consumer prices, are not used as so-called counter-salesmen for display to consumer-purchasers and from which to make sales to such consumer-purchasers. Moreover, the Catalog Jewelry and Giftware Industry, as herein referred to, is not to be understood as including the mail-order houses whose catalog business is that of selling direct to the consumer through catalogs in which are shown, generally, for each item therein, prices or price figures which constitute actual or net selling prices of such catalog houses to their customers. However, nothing herein shall be construed as relieving anyone of the necessity of complying with whatever laws or regulations may be applicable in the premises.

The proceeding for the establishment of trade practice rules was instituted upon application from members of the industry. In the course thereof a general trade practice conference for the entire industry was held in Cleveland, Ohio. Subsequently, a draft of proposed rules for the industry was made available upon public notice issued by the Commission to all interested or affected parties affording them opportunity to present their views to the Commission, including such pertinent information, suggestions or objections as they desired to submit, and to be heard orally. Accordingly, public hearing pursuant to such notice was held in Washington, D. C., and all matters there presented, or otherwise submitted, were duly received and considered.

Thereafter, and upon consideration of the entire proceedings, final action was taken by the Commission whereby it approved the following rules in Group I:

GROUP I*

RULE 1. *Misbranding and Misrepresentation.*

(a) The use on any product or article offered for sale, sold, or distributed of any marks, brands, or labels which are false, misleading, or deceptive in respect of such product or article, or in respect of the grade, quality, quantity, use, size, weight, material content, origin, preparation, manufacture, or distribution thereof, or which are false, misleading, or deceptive in any other respect, is an unfair trade practice.

(b) It is an unfair trade practice to make or publish, or cause to be made or published, in advertisements, catalogs, bulletins, circulars, or by radio, or in any other manner, any statement or representation which

* See page VIII for headnote applicable to Group I Rules.

is false, misleading, or deceptive in respect of any product or article offered for sale, sold, or distributed, or in respect of the grade, quality, quantity, use, size, weight, material content, origin, preparation, manufacture, or distribution thereof, or which is false, misleading, or deceptive in any other respect.

RULE 2. *Passing Off Inferior Sterling Silverware as that of Superior Grade, Etc.*

It is an unfair trade practice to pass off, directly or indirectly, through any means or device, any sterling silverware of a certain grade, quality, thickness, or weight as and for sterling silverware of superior grade, quality, thickness, or weight, with the capacity and tendency or effect of misleading or deceiving purchasers or prospective purchasers.

RULE 3. *Deceptive Pricing.*

(a) It is an unfair trade practice to use, in advertisements, catalogs, bulletins, circulars, or other printed matter, distributed to consumers, dealers, purchasing agents, cooperative buying groups or others, any price marks, price designations, or so-called prices, or figures, words, or marks purporting to be prices, when such do not represent actual bona fide selling prices, or which are misleading or deceptive in any respect. Nothing in this rule, however, shall be so construed as—

(1) To prevent the use in catalogs or sales literature of figures, letters, or symbols, or combinations thereof, purporting merely to be the catalog number of the item or article listed, which number is not accompanied by the dollar sign or decimal point indicating dollars and cents, and is not represented to be, and does not by position on the page or otherwise purport to be, a price of any kind, but is used to provide a number and basis for use in computing the dealer's or purchaser's cost (Illustrative number "1593U1975");

(2) To prevent the use in catalogs or sales literature of the term "Catalog Figure" (or its abbreviation "Cat. Fig.") followed by a number, or the use of a number immediately preceded or followed by a symbol, when such term, number, or symbol is not accompanied by the dollar sign or decimal point indicating dollars and cents, and when such term, number, or symbol as used is not a price of any kind nor is represented as such, but, while occupying a position on the page ordinarily occupied by price marks, is used merely to provide a number and basis for computing the dealer's or purchaser's cost, which method is described on another page;

Provided, however, on each page showing such term, number, or symbol, there is conspicuously and prominently set forth a notice to the effect that the "Catalog Figure" or "Cat. Fig.," or

the number immediately preceded or followed by a symbol, is not a price but is a number or code mark from which the selling price of the catalog house is determined. The following are examples of such page markings specified in this subsection:

"(Description of Article
offered for sale).....Catalog Figure 18½"

or

"(Description of Article
offered for sale).....Cat. Fig. 18½"

or

"(Description of Article
offered for sale)12½"

(At the top or bottom of each page, notice to the following effect is to be set forth in clear and conspicuous form, heavy bold type in contrasting color preferred:)

"NOTICE.—The figures designated Catalog Figures (Cat. Fig.) shown on this page are not retail prices nor any other prices. They are merely assigned figures from which the dealer or purchaser may determine his cost."

or

"½This is not a price but a code symbol from which you find your cost. See page ..."

(b) Nothing in this rule shall be construed as prohibiting the showing of a bona fide suggested resale price when clearly and nondeceptively designated as a suggested resale price, provided that as a resale price it is fair and reasonable and is not fictitiously inflated nor deceptively higher than the ordinary going resale price in the general market for such articles of the grade and quality to which the suggested resale price is applied; and provided further, that no deception is practiced in respect thereto.

(c) Except insofar as authorized or required by law, nothing in this rule shall be construed as requiring or permitting any member of the industry or other person to cause, directly or indirectly, any dealer or other reseller to charge any certain price or to fix or control the price at which any such dealer, reseller, or other person shall sell or resell any product.

RULE 4. *Misrepresentation of Character of Business.*

I. It is an unfair trade practice for any member of the industry, through catalogs, advertisements, or other means, to represent or hold himself or itself out directly or indirectly as being a wholesaler, jobber, distributor, wholesale distributor, wholesale jeweler, manufacturer, manufacturing wholesaler, manufacturer's distributor, importer, or exporter,

(a) Unless such member of the industry is respectively such wholesaler, jobber, distributor, wholesale distributor, wholesale jeweler, manufacturer, manufacturing wholesaler, manufacturer's distributor, importer, or exporter in respect of all the articles or products offered for sale or advertised in such catalogs or under such representations; or

(b) Unless, when true in part only, the representation is accompanied, in immediate conjunction, by such explicit qualifications or disclosure as will confine the representation within truthful scope, expressed and implied, showing the fact that such member is, as the case may be, such wholesaler, jobber, distributor, wholesale distributor, wholesale jeweler, manufacturer, manufacturing wholesaler, manufacturer's distributor, importer, or exporter as to only a certain stated proportion or designated groups of articles (or only as to certain specified articles) and not as to all the articles or products offered for sale, advertised, cataloged, or sold under or in connection with such representation.

II. It is an unfair trade practice for any member of the industry to represent, by catalog, advertisement, or otherwise, that any article or product offered for sale by such member may be secured directly or indirectly from such member at the usual wholesale price or at other designated price when such is not true in fact.

RULE 5. *Deceptive Set-up of Disclosed Information.*

In setting forth any statement, designation, or other information to be disclosed under any of these rules, the same shall be set forth clearly and unequivocally and not in a minimized or obscured manner, nor shall it be remotely or inconspicuously placed. Failure or refusal to make such disclosure in accord with the provisions of these rules, thereby causing or promoting deception of the purchasing or consuming public or injury to competition, is an unfair trade practice.

RULE 6. *Commercial Bribery.*

It is an unfair trade practice for a member of the industry, directly or indirectly, to give, or offer to give, or permit or cause to be given, money or anything of value to agents, employees, or representatives of customers or prospective customers, or to managers, superintendents, personnel officers, purchasing agents, or persons occupying similar positions in any business, without the knowledge of their employers or principals, as an inducement to influence such employers, principals, customers or prospective customers to purchase or contract to purchase products manufactured or sold by such industry member or the maker of such gift or offer, or to influence such employers, principals, customers or prospective customers to refrain from purchasing or dealing in the products of competitors or from dealing or contracting to deal with competitors.

RULE 7. Imitation of Trade-marks, Trade Names, Etc.

The imitation or simulation of the trade-marks, trade names, brands, or labels of competitors, with the capacity and tendency or effect of misleading or deceiving the purchasing or consuming public, is an unfair trade practice.

RULE 8. Combination or Coercion to Fix Prices, Suppress Competition, or Restrain Trade.

It is an unfair trade practice for a member of the industry or any person, firm, partnership, corporation, or association,

(a) to use, directly or indirectly, any form of threat, intimidation, or coercion against any member of the industry to unlawfully fix, maintain, or enhance prices, suppress competition, or restrain trade; or

(b) to enter into or take part in, directly or indirectly, any agreement, understanding, combination, conspiracy, or concert of action with one or more members of the industry, or with one or more persons, firms, partnerships, corporations, or associations, to unlawfully fix, maintain, or enhance prices, suppress competition, or restrain trade.

RULE 9.

(a) Prohibited Discriminatory Prices, or Rebates, Refunds, Discounts, Credits, Etc., Which Effect Unlawful Price Discrimination.—

It is an unfair trade practice for any member of the industry engaged in commerce,¹ in the course of such commerce, to grant or allow, secretly or openly, directly or indirectly, any rebate, refund, discount, credit, or other form of price differential, where such rebate, refund, discount, credit, or other form of price differential, effects a discrimination in price between different purchasers of goods of like grade and quality, where either or any of the purchases involved therein are in commerce,¹ and where the effect thereof may be substantially to lessen competition or tend to create a monopoly in any line of commerce,¹ or to injure, destroy, or prevent competition with any person who either grants or knowingly receives the benefit of such discrimination, or with customers of either of them: *Provided, however—*

(1) That the goods involved in any such transaction are sold for use, consumption, or resale within any place under the jurisdiction of the United States;

(2) That nothing herein contained shall prevent differentials which make only due allowance for differences in the cost of manufacture, sale, or delivery resulting from the differing methods or

¹ See footnote, p. 460.

quantities in which such commodities are to such purchasers sold or delivered;

(3) That nothing herein contained shall prevent persons engaged in selling goods, wares, or merchandise in commerce¹ from selecting their own customers in bona fide transactions and not in restraint of trade;

(4) That nothing herein contained shall prevent price changes from time to time where made in response to changing conditions affecting either (a) the market for the goods concerned, or (b) the marketability of the goods, such as, but not limited to, actual or imminent deterioration of perishable goods, obsolescence of seasonal goods, distress sales under court process, or sales in good faith in discontinuance of business in the goods concerned.

(b) *Prohibited Brokerage and Commissions.*—It is an unfair trade practice for any member of the industry engaged in commerce,¹ in the course of such commerce, to pay or grant, or to receive or accept, anything of value as a commission, brokerage, or other compensation, or any allowance or discount in lieu thereof, except for services rendered in connection with the sale or purchase of goods, wares, or merchandise, either to the other party to such transaction or to an agent, representative, or other intermediary therein where such intermediary is acting in fact for or in behalf, or is subject to the direct or indirect control, of any party to such transaction other than the person by whom such compensation is so granted or paid.

(c) *Prohibited Advertising or Promotional Allowances, Etc.*—It is an unfair trade practice for any member of the industry engaged in commerce¹ to pay or contract for the payment of advertising or promotional allowances or any other thing of value to or for the benefit of a customer of such member in the course of such commerce as compensation or in consideration for any services or facilities furnished by or through such customer in connection with the processing, handling, sale, or offering for sale of any products or commodities manufactured, sold, or offered for sale by such member, unless such payment or consideration is available on proportionally equal terms to all other customers competing in the distribution of such products or commodities.

(d) *Prohibited Discriminatory Services or Facilities.*—It is an unfair trade practice for any member of the industry engaged in commerce¹ to discriminate in favor of one purchaser against another purchaser or purchasers of a commodity bought for resale, with or without processing, by contracting to furnish or furnishing, or by contributing to the furnishing of, any services or facilities connected with the processing, handling, sale, or offering for sale of such commodity so

¹ See footnote, p. 460.

purchased upon terms not accorded to all purchasers on proportionally equal terms.

(e) *Inducing or Receiving an Illegal Discrimination in Price.*—It is an unfair trade practice for any member of the industry engaged in commerce,¹ in the course of such commerce, knowingly to induce or receive a discrimination in price which is prohibited by the foregoing provisions of this Rule 9.

(f) *Purchases by Schools, Colleges, Universities, Public Libraries, Churches, Hospitals, and Charitable Institutions Not Operated for Profit.*—The foregoing provisions of this Rule 9 relate to practices within the purview of the Robinson-Patman Antidiscrimination Act, which Act and the application thereunder of this Rule 9 are subject to the limitations expressed in the amendment to such Robinson-Patman Antidiscrimination Act, which amendment was approved May 26, 1938, and reads as follows:

"Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That nothing in the Act approved June 19, 1936 (Public, Numbered 692, Seventy-fourth Congress, second session), known as the Robinson-Patman Antidiscrimination Act, shall apply to purchases of their supplies for their own use by schools, colleges, universities, public libraries, churches, hospitals, and charitable institutions not operated for profit." (52 Stat. 446; United States Code, 1940 Edition, Title 15, Sec. 13c.)

RULE 10. Aiding or Abetting Use of Unfair Trade Practices.

It is an unfair trade practice for any person, firm, or corporation to aid, abet, coerce, or induce another, directly or indirectly, to use or promote the use of any unfair trade practice specified in these rules.

Promulgated by the Federal Trade Commission December 23, 1943.

¹ See footnote, p. 460.

TRADE PRACTICE RULES

FOR THE

MUSICAL INSTRUMENT AND ACCESSORIES INDUSTRY

PROMULGATED FEBRUARY 2, 1944

STATEMENT BY THE COMMISSION

Trade practice rules for the Musical Instrument and Accessories Industry, as hereinafter set forth, are promulgated by the Federal Trade Commission under its trade practice conference procedure.

The rules are directed to the prevention of various unfair competitive methods or practices and to the protection of members of the industry and the public from their harmful effects.

The industry's products consist of musical instruments of all kinds played by the individual or musician, and accessories therefor. Embraced therein are band or orchestra instruments, stringed, wind, or percussion instruments, pianos, organs, and other musical instruments, played by the individual or musician, either publicly or privately, in groups or otherwise. Members of the industry are persons or concerns who manufacture, distribute, or sell such products. The aggregate annual volume of business is estimated to approximate, in normal times, \$80,000,000 retail value.

With the cooperation of industry members, a trade practice conference under the auspices of the Commission was held at Cincinnati, Ohio, and drafts of proposed rules were duly considered. In the further proceedings the rules under consideration were published by the Commission in appropriate form and made available to all industry members and interested or affected parties upon public notice whereby they were afforded opportunity to present their views, including such pertinent information, suggestions, amendments or objections as they desired to offer, and to be heard in the premises. Such public hearing was accordingly held in Washington, D. C., and all matters presented, or otherwise received, in the proceeding were duly considered by the Commission.

Thereafter, and upon full consideration of the entire matter, final action was taken by the Commission whereby it approved and received, respectively, the following trade practice rules in Group I and Group II:

THE RULES

GROUP I*

RULE 1. *Misrepresentation and Misbranding.*

In the course of or in connection with selling, distributing, or promoting the sale or distribution of any industry product, it is an unfair trade practice to use or cause to be used any trade promotional literature, advertising matter, guarantee, warranty, mark, brand, label, designation or representation, however disseminated or published, which directly, or by implication or otherwise, has the capacity and tendency or effect of misleading or deceiving purchasers or prospective purchasers in respect to the grade, quality, quantity, substance, character, make, type, price, nature, size, tone, origin, use, endorsement, appearance, performance, construction, specifications, finish, material content, or preparation of such product, or in any other material respect.

RULE 2. *Deceptive Testimonials.*

In the course of or in connection with selling, distributing, or promoting the sale or distribution of any industry product, it is an unfair trade practice to use or cause to be used any testimonials, written or oral, which are false, misleading, or deceptive as to the merits or qualities of such industry product, or which are false, misleading, or deceptive in any other material respect.

(NOTE.—Under this rule, the following types of testimonials are among those which should not be used, namely:

(a) Testimonials previously given in respect of a product of a manufacturer or distributor but which are deceptive by reason of being so old as no longer to be applicable to the products or instruments currently produced by such manufacturer or sold by such distributor.

(b) Testimonials which deceptively purport to be in support of the merits of the instruments or products endorsed but which were in fact given because of advertising benefits and other considerations and not because of the merits of such instruments or products or the testifier's good-faith belief in the merits thereof.

(c) Testimonials which deceptively purport or imply that the testifier regularly or principally uses the instrument or make of instrument endorsed, when in fact the testifier does not use the instrument, or uses it only to a minor or insubstantial extent and not regularly or principally.

(d) Testimonials which deceptively represent, purport, or imply, directly or indirectly, that the endorsement therein is or has been given by the testifier as his unbiased, unsubsidized, or bona fide endorsement of the instrument, when in fact such testimonial was procured by or given solely because of a financial or other consideration or subsidy received by or for the benefit of such testifier.

* See page VIII for headnote applicable to Group I Rules.

(e) Testimonials which in any respect are untrue, or which contain inferences or implications not fully justified by the facts, or which are in any other way deceptive or misleading by reason of undisclosed facts or circumstances or for any other reason.)

RULE 3. *Misrepresentation as to the Designing, Use, or Endorsement of Musical Instruments.*

In the course of or in connection with selling, distributing, or promoting the sale or distribution of any industry product, it is an unfair trade practice to represent, directly or indirectly, through advertising or otherwise, that a musician, composer, orchestra leader, or other person or organization, designed, uses or endorses a particular musical instrument or instruments or other products of the industry, when such is not the fact.

RULE 4. *Misrepresentation as to Price Reductions.*

It is an unfair trade practice for any member of the industry to represent, in advertising or otherwise, that the price of any industry product has been reduced from what is in fact a fictitious price, or that such price is a reduced or a special price when it is in fact the regular selling price of such product, or that the regular price thereof is higher when such is not the fact, or otherwise to falsely or deceptively represent the past or current price of any industry product.

RULE 5. *Use of "Bait" Advertising.*

(a) In the course of or in connection with selling, distributing, or promoting the sale or distribution of any industry product, it is an unfair trade practice to publish or use advertising, or other representations written or oral, which have the capacity and tendency or effect of misleading or deceiving purchasers or prospective purchasers into the belief that a larger supply of such products is available to purchasers at the advertised or stated price or prices than is in fact so available, or that industry products so offered for sale or sold under such representations or conditions are of high grade or quality when such is not true in fact.

(b) It is also an unfair trade practice to advertise, represent or describe the prices at which any musical instruments or accessories are offered for sale as being the "balance due" or unpaid portion on a previous sale under a conditional or time-payment contract, when such is not true in fact, or when such advertisement, representation or offer is otherwise false, misleading or deceptive.

RULE 6. *Deception as to Rebuilt, Used, Converted, Reconstructed, Restyled, Repossessed, or Secondhand Products.*

(a) It is an unfair trade practice for any member of the industry to sell, offer for sale, advertise or otherwise represent any musical instrument or accessory (1) as being new when it is in fact rebuilt,

used, repossessed, or secondhand; or (2) as being of new design or new style when it has been converted, reconstructed, or restyled from a used instrument or accessory and such fact is deceptively concealed.

(b) It is an unfair trade practice for any member of the industry to advertise or otherwise represent, directly or indirectly, that he owns or has in his possession for sale new, rebuilt, used, repossessed, or secondhand musical instruments or accessories of a particular type, make, or description, when such is not true in fact.

(c) In the sale or distribution of musical instruments or accessories which are rebuilt, used, repossessed, or secondhand, it is an unfair trade practice to fail or refuse to make full and nondeceptive disclosure of the fact that such instruments or accessories are not new, but are rebuilt, used, repossessed, or secondhand, as the case may be, such failure or refusal to disclose having the capacity and tendency or effect of misleading or deceiving purchasers or prospective purchasers.

RULE 7. *Misrepresentation as to Being Manufacturer, Importer, Wholesaler, Jobber, Distributor, or Retailer, and Prices in Relation Thereto.*

(a) It is an unfair trade practice for any person, partnership, corporation or organization, by trade or corporate name or otherwise, to represent or to hold himself or itself out as being the manufacturer, importer, wholesaler, jobber, distributor, or retailer of any industry product advertised, offered for sale, sold or distributed, when such is not the fact.

(b) It is an unfair trade practice to use any other deceptive or misleading device, method or representation respecting the character, nature or status of the business of any person, concern or organization engaged in selling or promoting the sale of any industry product.

(c) It is an unfair trade practice for any member of the industry, whether selling as manufacturer, importer, wholesaler, jobber, distributor, or retailer, to misrepresent his prices as being either wholesale or retail prices when such is not true in fact, or to otherwise misrepresent his prices.

RULE 8. *Deception as to Origin.*

In respect to musical instruments or accessories made wholly or partially in a foreign country, or from parts manufactured in a foreign country and assembled into the finished product in the United States, it is an unfair trade practice:

(a) To offer for sale, sell, or distribute any such musical instruments or accessories under marks, stamps, brands, labels, or representations which have the capacity and tendency or effect of misleading or deceiving purchasers or prospective purchasers into

the erroneous belief that such products were produced wholly within the United States; or

(b) To offer for sale, sell, or distribute any such musical instruments or accessories without the same being conspicuously marked, stamped, branded, or labeled so as to indicate clearly and nondeceptively the country of origin of such products, the failure, refusal, or omission to so mark, stamp, brand, or label such products having the capacity and tendency or effect of thereby promoting, abetting, or effectuating the marketing of such products under conditions which are misleading or deceptive to purchasers or prospective purchasers.

(Nothing in this rule shall be construed as relieving any member of the industry or other party of the necessity of complying with the requirements of the customs laws or regulations, or other applicable provisions of law or regulations, relating to the marking of imported articles.)

RULE 9. *Misrepresentation as to Installment Sales Contracts, Their Terms or Conditions, Etc.*

It is an unfair trade practice to make or publish or cause to be made or published, directly or indirectly, any false, misleading, or deceptive statements or representations, through advertising or otherwise, concerning installment sales contracts used or their terms or conditions, including down payments, interest, carrying charges, etc., or respecting any other matter relative to such contracts or their terms or conditions.

RULE 10. *Deception in Respect of Keyboard or Number of Keys.*

(a) It is an unfair trade practice to cause any piano having less than the standard or 88-note keyboard to be represented or passed off, directly or indirectly, as and for a piano having such standard or 88-note keyboard.

(b) It is an unfair trade practice to cause any other musical instrument having less than the full or standard keyboard or number of keys to be represented or passed off, directly or indirectly, as and for a musical instrument having such full or standard keyboard or number of keys.

RULE 11. *Defamation of Competitors or Disparagement of Their Products.*

The defamation of competitors by falsely imputing to them dishonorable conduct, inability to perform contracts, questionable credit standing, or by other false representations, or the false disparagement of the grade, quality, quantity, substance, character, make, type, price, nature, size, tone, origin, appearance, performance, construction, specifications, finish, material content, or preparation of the products of

competitors, or of their business methods, selling prices, values, credit terms, policies or services, is an unfair trade practice.

RULE 12. *Inducing Breach of Contract.*

Inducing or attempting to induce the breach of existing lawful contracts between competitors and their customers or their suppliers by any false or deceptive means whatsoever, or interfering with or obstructing the performance of any such contractual duties or services by any such means, with the purpose and effect of unduly hampering, injuring, or prejudicing competitors in their business, is an unfair trade practice.

RULE 13. *"Push Money," "Gratuities," Etc.*

It is an unfair trade practice for any member of the industry to bribe by giving or contracting to give or causing to be given, or by loaning or causing to be loaned, directly or indirectly, to any orchestra leader, band leader, official, singer, musician, music teacher, or any other person, employed by another, or to the agent or representative of, or to any one else on behalf of, such orchestra leader, band leader, official, singer, musician, music teacher, or other person, any "push money," gift, bonus, fee, gratuity, payment, discount, refund, rebate, royalty, service, musical instrument, favor or other thing or act of value, as an inducement to such individual to play or use or cause to be played or used, in a public performance, any musical instrument or accessory of such industry member in either of the following cases:

- (a) Without the knowledge and consent of said employer; or
- (b) With or without the knowledge and consent of said employer, where the effect may be substantially to lessen competition or tend to create a monopoly or unreasonably restrain trade in the marketing of such musical instruments or accessories, or where the effect is to mislead or deceive purchasers or prospective purchasers.

RULE 14. *Misuse of Word "Free," Etc.*

The use of the word "free," or the equivalent thereof, when the article is in fact not free, with the capacity and tendency or effect of misleading or deceiving purchasers or prospective purchasers, is an unfair trade practice.

RULE 15. *Selling Below Cost.*

The practice of selling industry products below the seller's cost with the intent and with the effect of injuring a competitor and where the effect may be substantially to lessen competition or tend to create a monopoly or unreasonably restrain trade is an unfair trade practice. All elements recognized by good accounting practice as proper elements of such cost shall be included in determining cost under this

rule. The costs, however, which are referred to in the rule, are actual costs of the respective seller and not some other figure or average costs in the industry determined by an industry cost survey or otherwise.

RULE 16. *Discrimination.*

(a) *Prohibited Discriminatory Prices, or Rebates, Refunds, Discounts, Credits, Etc., Which Effect Unlawful Price Discrimination.*—It is an unfair trade practice for any member of the industry engaged in commerce,¹ in the course of such commerce, to grant or allow, secretly or openly, directly or indirectly, any rebate, refund, discount, credit, or other form of price differential, where such rebate, refund, discount, credit, or other form of price differential, effects a discrimination in price between different purchasers of goods of like grade and quality, where either or any of the purchases involved therein are in commerce,¹ and where the effect thereof may be substantially to lessen competition or tend to create a monopoly in any line of commerce,¹ or to injure, destroy, or prevent competition with any person who either grants or knowingly receives the benefit of such discrimination, or with customers of either of them: *Provided, however—*

(1) That the goods involved in any such transaction are sold for use, consumption, or resale within any place under the jurisdiction of the United States;

(2) That nothing herein contained shall prevent differentials which make only due allowance for differences in the cost of manufacture, sale, or delivery resulting from the differing methods or quantities in which such commodities are to such purchasers sold or delivered;

(3) That nothing herein contained shall prevent persons engaged in selling goods, wares, or merchandise in commerce¹ from selecting their own customers in bona fide transactions and not in restraint of trade;

(4) That nothing herein contained shall prevent price changes from time to time where made in response to changing conditions affecting either (a) the market for the goods concerned, or (b) the marketability of the goods, such as, but not limited to, actual or imminent deterioration of perishable goods, obsolescence of seasonal goods, distress sales under court process, or sales in good faith in discontinuance of business in the goods concerned.

(b) *Prohibited Brokerage and Commissions.*—It is an unfair trade practice for any member of the industry engaged in commerce,¹ in the course of such commerce, to pay or grant, or to receive or accept, anything of value as a commission, brokerage, or other compensation, or any allowance or discount in lieu thereof, except for services rendered

¹ See footnote, p. 460.

in connection with the sale or purchase of goods, wares, or merchandise, either to the other party to such transaction or to an agent, representative, or other intermediary therein where such intermediary is acting in fact for or in behalf, or is subject to the direct or indirect control, of any party to such transaction other than the person by whom such compensation is so granted or paid.

(c) *Prohibited Advertising or Promotional Allowances, Etc.*—It is an unfair trade practice for any member of the industry engaged in commerce¹ to pay or contract for the payment of advertising or promotional allowances or any other thing of value to or for the benefit of a customer of such member in the course of such commerce as compensation or in consideration for any services or facilities furnished by or through such customer in connection with the processing, handling, sale, or offering for sale of any products or commodities manufactured, sold, or offered for sale by such member, unless such payment or consideration is available on proportionally equal terms to all other customers competing in the distribution of such products or commodities.

(d) *Prohibited Discriminatory Services or Facilities.*—It is an unfair trade practice for any member of the industry engaged in commerce¹ to discriminate in favor of one purchaser against another purchaser or purchasers of a commodity bought for resale, with or without processing, by contracting to furnish or furnishing, or by contributing to the furnishing of, any services or facilities connected with the processing, handling, sale, or offering for sale of such commodity so purchased upon terms not accorded to all purchasers on proportionally equal terms.

(e) *Inducing or Receiving an Illegal Discrimination in Price.*—It is an unfair trade practice for any member of the industry engaged in commerce¹ in the course of such commerce, knowingly to induce or receive a discrimination in price which is prohibited by the foregoing provisions of this Rule 16.

(f) *Purchases by Schools, Colleges, Universities, Public Libraries, Churches, Hospitals, and Charitable Institutions Not Operated for Profit.*—The foregoing provisions of this Rule 16 relate to practices within the purview of the Robinson-Patman Antidiscrimination Act, which Act and the application thereunder of this Rule 16 are subject to the limitations expressed in the amendment to such Robinson-Patman Antidiscrimination Act, which amendment was approved May 26, 1938, and reads as follows:

"Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That nothing in the Act approved June 19, 1936 (Public, Numbered 692,

¹ See footnote, p. 460.

Seventy-fourth Congress, second session), known as the Robinson-Patman Antidiscrimination Act, shall apply to purchases of their supplies for their own use by schools, colleges, universities, public libraries, churches, hospitals, and charitable institutions not operated for profit." (52 Stat. 446; United States Code, 1940 Edition, Title 15, Sec. 13c.)

RULE 17. *Aiding or Abetting Use of Unfair Trade Practices.*

It is an unfair trade practice for any person, firm, or corporation to aid, abet, coerce, or induce another, directly or indirectly, to use or promote the use of any unfair trade practice specified in these rules.

GROUP II*

RULE A. *Publication of Price Lists.*

The industry approves the practice of each individual member of the industry independently publishing and circulating to the purchasing trade his own price lists fully setting forth his terms of sale.

A Committee on Trade Practices is hereby created by the Industry to cooperate with the Federal Trade Commission and to perform such acts as may be legal and proper to put these rules into effect.

Promulgated by the Federal Trade Commission February 2, 1944.

* See page VIII for headnote applicable to Group II Rules.

TRADE PRACTICE RULES

FOR THE

HEARING AID INDUSTRY

PROMULGATED DECEMBER 30, 1944

STATEMENT BY THE COMMISSION

Trade practice rules for the Hearing Aid Industry, as hereinafter set forth, are promulgated by the Federal Trade Commission under its trade practice conference procedure.

The industry's products to which the rules relate consist of hearing aid instruments or devices, parts and accessories therefor, and preparations or other products represented as aiding, improving, or correcting defective hearing. Members of the industry include persons or concerns manufacturing, distributing or selling such products. Annual volume of sales of hearing aids is reported as aggregating at present approximately \$25,000,000.

The rules are established in cooperation with the industry. Various unfair methods of competition, unfair or deceptive acts or practices, and other trade evils, are listed and proscribed. A primary purpose of these provisions is to maintain free and fair competition for the protection of the buying public and the industry through the elimination and prevention of such harmful practices. The rules also contain other provisions in the interest of more effectively serving the public by use of fair practices.

In the course of the proceeding, which was instituted upon application of members of the industry, a general trade practice conference was held in Cleveland, Ohio, under auspices of the Federal Trade Commission. At such conference suggested rules were considered. Subsequently, a draft of proposed rules in appropriate form was published for the information of all concerned and public notice was issued affording interested or affected parties opportunity to present their views, including such pertinent information, suggestions, amendments, or objections as they desired to offer, and to be heard in the premises. Accordingly, hearing was held in Washington, D. C., and all matters presented, or otherwise received in the proceeding, have been duly considered.

Thereafter, and upon full consideration of the entire matter, final action was taken by the Commission whereby it approved and received, respectively, the following trade practice rules in Group I and Group II:

THE RULES

GROUP I*

RULE 1. *Misrepresentation in General.*

It is an unfair trade practice for any member of the industry to use, or cause or promote the use of, any trade promotional literature, advertising matter, testimonial, guarantee, warranty, mark, brand, label, designation or representation, however disseminated or published, which has the capacity and tendency or effect of misleading or deceiving purchasers, prospective purchasers, or such member's own sales agents, dealers, or distributors—

(a) with respect to the grade, quality, quantity, origin, price, terms of sale, use, construction, design, durability, performance, efficacy, restorative or other properties, or physiological benefits of any industry product; or

(b) with respect to any service offered, promised, or to be supplied to purchasers of such products; or

(c) with respect to the purported endorsement, acceptance, approval, or use thereof by any person, organization, agency, group, or association; or

(d) with respect to the manufacture, distribution, marketing, or servicing of any industry product, or in any other respect.

(NOTE.—Among the inhibitions of this rule, but not in limitation thereof, is "false advertisement," as defined in Section 15 of the Federal Trade Commission Act, of any "device" or other product within the scope of such section.)

RULE 2. *Misrepresentation as to Warranties, Guarantees, and the Servicing of Hearing Aids.*

It is an unfair trade practice for any member of the industry—

(a) to fail or refuse to promptly fulfill in good faith any warranties, guarantees, promises, or representations, express or implied, given or made to purchasers of industry products; or

(b) to fail or refuse to promptly render services or correct defects as warranted, guaranteed, promised, or represented; or

(c) to use any means whatsoever to induce purchasers to believe such warranties, guarantees, promises, or representations are more binding on the seller or afford more protection to the purchaser than is in fact true.

RULE 3. *Blind Advertising.*

It is an unfair trade practice to use "blind" advertisements in such manner as to have the capacity and tendency or effect of misleading or

* See page VIII for headnote applicable to Group I Rules.

deceiving purchasers or prospective purchasers, directly or indirectly as to the character, make, type, or efficacy of any industry product being offered for sale, or as to any services offered or promised in connection therewith, or as to the identity of the seller, or in any other respect. (*Also, see note to Rule 6.*)

RULE 4. Misrepresentation of Earnings of Salesmen or Agents.

It is an unfair trade practice for any member of the industry to make or publish, or cause to be made or published, any advertisement, offer, statement, or other form of representation which directly or by implication is false, misleading or deceptive—

(a) concerning the salary, commission, income, earnings or other remuneration which agents, canvassers, solicitors, or sales representatives receive or may receive; or

(b) concerning any conditions or contingencies affecting such remuneration or the opportunities therefor.

RULE 5. Misrepresentation as to Character of Business.

It is an unfair trade practice for any member of the industry to represent, directly or indirectly, through the use of any word or term in his corporate or trade name, in his advertising or otherwise, that he is a manufacturer of hearing aids, or of batteries or other parts or accessories therefor, or that he is the owner or operator of a factory or producing company manufacturing them, or that he owns or maintains an acoustical research laboratory devoted to hearing aid research or development, when such is not the fact, or in any other manner to misrepresent the character, extent, or type of his business.

RULE 6. Defamation of Competitors or Disparagement of Their Products.

The defamation of competitors by falsely imputing to them dishonorable conduct, inability to perform contracts, questionable credit standing, or by other false representations, or the false disparagement of the grade, quality, origin, price, terms of sale, use, construction, design, durability, performance, efficacy, physiological benefits, restorative or other properties, manufacture, distribution, marketing, or servicing of the products of competitors, or of their business methods, values, credit terms, or policies, or in any other respect, is an unfair trade practice.

(NOTE.—The use of "blind" advertisements as a means of accomplishing such defamation or false disparagement is deemed to be within the inhibitions of this rule as well as the use of any other means of practicing such prohibited defamation or disparagement.)

RULE 7. Imitation or Simulation of Trade-marks, Trade Names, Etc.

The imitation or simulation of the trade-marks, trade names, brands,

or labels of competitors, or of the exclusively owned designs of competitors which have not been directly or by operation of law dedicated to the public, with the tendency and capacity or effect of misleading or deceiving purchasers or prospective purchasers, is an unfair trade practice.

RULE 8. Procurement of Competitors' Confidential Information by Unfair Means and Wrongful Use Thereof.

It is an unfair trade practice for any member of the industry to obtain information concerning the business of a competitor by bribery of an employee or agent of such competitor, by false or misleading statements or representations, by the impersonation of one in authority, or by any other unfair means, and to use the information so obtained in such a manner as to injure said competitor in his business or to suppress competition or unreasonably restrain trade.

RULE 9. Unfair Threats of Infringement Suits.

The circulation of threats of suit for infringement of patents or trade-marks among customers or prospective customers of competitors, not made in good faith but for the purpose or with the effect of harassing or intimidating such customers or prospective customers or of unduly hampering, injuring, or prejudicing competitors in their business, is an unfair trade practice.

RULE 10. Inducing Breach of Contract.

Inducing or attempting to induce the breach of existing lawful contracts between competitors and their dealers, customers, or suppliers by any false or deceptive means whatsoever, or interfering with or obstructing the performance of any such contractual duties or services by any such means, with the purpose and effect of unduly hampering, injuring, or prejudicing competitors in their business, is an unfair trade practice.

RULE 11. Enticing Away Employees of Competitors.

Wilfully enticing away the employees of competitors, or the employees of distributors, dealers, or representatives of such competitors, with the purpose and effect of thereby unduly hampering or injuring competitors in their business and destroying or substantially lessening competition, is an unfair trade practice.

(NOTE.—Nothing in this rule shall be construed as prohibiting employees or agents from seeking more favorable employment, or as preventing manufacturers or sellers from soliciting business from any dealers or other prospective purchasers or marketers in good faith and by means of fair competitive methods.)

RULE 12. Commercial Bribery.

(a) *In Selling or Marketing.*—It is an unfair trade practice for a member of the industry, directly or indirectly, to give, or offer to give,

or permit or cause to be given, money or anything of value to agents, employees, or representatives of customers or prospective customers, or to agents, employees, or representatives of competitors' customers or prospective customers, without the knowledge of their employers or principals, as an inducement to influence their employers or principals to purchase or contract to purchase products manufactured or sold by such industry member or the maker of such gift or offer, or to influence such employers or principals to refrain from dealing in the products of competitors or from dealing or contracting to deal with competitors.

(b) *In Purchasing Supplies.*—It is an unfair trade practice for any member of the industry, directly or indirectly, to bribe an employee or agent of a supplier to induce such supplier to discriminate in favor of such member of the industry over other purchasers from such supplier, with the effect of thereby unduly hampering a competitor of such member in his business and destroying or substantially lessening competition. (See also Rule 14, paragraph (c), relative to procurement of illegal discrimination in price.)

RULE 13. *Selling Below Cost.*

The practice of selling industry products below the seller's cost with the intent and with the effect of injuring a competitor and where the effect may be substantially to lessen competition or tend to create a monopoly or unreasonably restrain trade is an unfair trade practice. All elements recognized by good accounting practice as proper elements of such cost shall be included in determining cost under this rule. The costs, however, which are referred to in the rule, are actual costs of the respective seller and not some other figure or average costs in the industry determined by an industry cost survey or otherwise.

RULE 14. *Discrimination.*

(a) *Prohibited Discriminatory Prices, or Rebates, Refunds, Discounts, Credits, Commissions, Etc., Which Effect Unlawful Price Discrimination.*—It is an unfair trade practice for any member of the industry engaged in commerce,¹ in the course of such commerce, to grant or allow, secretly or openly, directly or indirectly, any rebate, refund, discount, credit, commission, or other form of price differential, where such rebate, refund, discount, credit, commission, or other form of price differential, effects a discrimination in price between different purchasers of goods of like grade and quality, where either or any of the purchases involved therein are in commerce,¹ and where the effect thereof may be substantially to lessen competition or tend to create a monopoly in any line of commerce,¹ or to injure, destroy, or prevent competition with any person who either grants or knowingly receives the benefit of such discrimination, or with customers of either of them: *Provided, however—*

¹ See footnote, p. 460.

(1) That the goods involved in any such transaction are sold for use, consumption, or resale within any place under the jurisdiction of the United States;

(2) That nothing herein contained shall prevent differentials which make only due allowance for differences in the cost of manufacture, sale, or delivery resulting from the differing methods or quantities in which such commodities are to such purchasers sold or delivered;

(3) That nothing herein contained shall prevent persons engaged in selling goods, wares, or merchandise in commerce¹ from selecting their own customers in bona fide transactions and not in restraint of trade;

(4) That nothing contained in this rule shall prevent price changes from time to time where made in response to changing conditions affecting either (a) the market for the goods concerned, or (b) the marketability of the goods, such as, but not limited to, actual or imminent deterioration of perishable goods, obsolescence of seasonal goods, distress sales under court process, or sales in good faith in discontinuance of business in the goods concerned.

(b) *Prohibited Brokerage and Commissions.*—It is an unfair trade practice for any member of the industry engaged in commerce,¹ in the course of such commerce, to pay or grant, or to receive or accept, anything of value as a commission, brokerage, or other compensation, or any allowance or discount in lieu thereof, except for services rendered in connection with the sale or purchase of goods, wares, or merchandise, either to the other party to such transaction or to an agent, representative, or other intermediary therein where such intermediary is acting in fact for or in behalf, or is subject to the direct or indirect control, of any party to such transaction other than the person by whom such compensation is so granted or paid.

(c) *Prohibited Advertising or Promotional Allowances, Etc.*—It is an unfair trade practice for any member of the industry engaged in commerce¹ to pay or contract for the payment of advertising or promotional allowances or any other thing of value to or for the benefit of a customer of such member in the course of such commerce as compensation or in consideration for any services or facilities furnished by or through such customer in connection with the processing, handling, sale, or offering for sale of any products or commodities manufactured, sold, or offered for sale by such member, unless such payment or consideration is available on proportionally equal terms to all other customers competing in the distribution of such products or commodities.

(d) *Prohibited Discriminatory Services or Facilities.*—It is an unfair trade practice for any member of the industry to discrim-

¹ See footnote, p. 460.

inate in favor of one purchaser against another purchaser or purchasers of a commodity bought for resale, with or without processing, by contracting to furnish or furnishing, or by contributing to the furnishing of, any services or facilities connected with the processing, handling, sale, or offering for sale of such commodity so purchased upon terms not accorded to all purchasers on proportionally equal terms.

(e) *Inducing or Receiving an Illegal Discrimination in Price.*—It is an unfair trade practice for any member of the industry engaged in commerce,¹ in the course of such commerce, knowingly to induce or receive a discrimination in price which is prohibited by the foregoing provisions of this Rule 14.

(f) *Purchases by Schools, Colleges, Universities, Public Libraries, Churches, Hospitals, and Charitable Institutions Not Operated for Profit.*—The foregoing provisions of this Rule 14 relate to practices within the purview of the Robinson-Patman Antidiscrimination Act, which Act and the application thereunder of this Rule 14 are subject to the limitations expressed in the amendment to such Robinson-Patman Antidiscrimination Act, which amendment was approved May 26, 1938, and reads as follows:

"Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That nothing in the Act approved June 19, 1936 (Public, Numbered 692, Seventy-fourth Congress, second session), known as the Robinson-Patman Antidiscrimination Act, shall apply to purchases of their supplies for their own use by schools, colleges, universities, public libraries, churches, hospitals, and charitable institutions not operated for profit." (52 Stat. 446; United States Code, 1940 Edition, Title 15, Sec. 13c.)

RULE 15. Aiding or Abetting Use of Unfair Trade Practices.

It is an unfair trade practice for any person, firm, or corporation to aid, abet, coerce, or induce another, directly or indirectly, to use or promote the use of any unfair trade practice specified in these rules, or of any other unfair method of competition or unfair or deceptive act or practice.

GROUP II*

RULE A. Information as to the Care, Use, and Maintenance of Products.

(1) The practice, by manufacturers, distributors or dealers, of furnishing and disseminating, through advertisements, bulletins or other

¹ See footnote, p. 460.

* See page VIII for headline applicable to Group II Rules.

publicity, accurate and nondeceptive information as to the proper care and use of their hearing aids or parts and accessories therefor, is approved and recommended as a desirable practice to follow in the interest of enabling customers to obtain and enjoy full benefits of the desirable qualities and service of such instruments.

(2) To assist purchasers or users in selecting and purchasing batteries which are parts or accessories for hearing aids, and to prevent misunderstanding, confusion and deception, it is also important that each of such batteries be marked by the manufacturer thereof in conformity with the provisions of Section 7 of the Circular of the National Bureau of Standards C435, issued February 18, 1942, so as to reveal the source of such battery, its size or number; also, date of manufacture, or expiration of a guarantee period, indicated as such.

RULE B. Training of Sales, Service, and Other Employees.

The practice by manufacturers, distributors, and dealers of adequately training employees in the fitting and servicing of hearing aids is approved and recommended as a desirable practice to follow in the interest of enabling customers to obtain and enjoy the fullest possible benefit from the use of such instruments.

RULE C. Assistance to Users in Servicing Hearing Aids.

Manufacturers and dealers are encouraged to provide all possible facilities and services to the users of their hearing aids to insure maximum assistance and satisfaction to such users of the respective instruments. The sale of hearing aids without reasonably adequate provision for properly servicing the instruments to the extent necessary for satisfactory use is not encouraged.

RULE D. Cost Records.

It is the judgment of the industry that each member should independently keep proper and accurate records for determining his costs.

Promulgated by the Federal Trade Commission December 30, 1944.

TRADE PRACTICE RULES

FOR THE

WATER HEATER INDUSTRY

PROMULGATED JANUARY 11, 1945

STATEMENT BY THE COMMISSION

The practice rules for the Water Heater Industry, as hereinafter set forth, are promulgated by the Federal Trade Commission under its trade practice conference procedure.

The products of the industry to which the rules apply consist of water heaters, and parts and accessories therefor. Members of the industry are the persons and concerns who manufacture or market these products. Water heaters covered by the rules include the several types in which the heat is produced by gas, electricity, fuel oil, kerosene, coal, or by other fuel. They are extensively used, chiefly as appliances and equipment to provide domestic hot water. They form a part of essential equipment in all modern homes. The industry's peacetime production of water heaters reached nearly 2,000,000 annually, aggregating approximately \$80,000,000 in value at retail prices.

In the rules various unfair methods of competition and trade evils are catalogued as unfair trade practices which are to be avoided and prevented as harmful to the industry and to the purchasing public. Support of sound business methods is further provided in additional rules. They are all directed toward the maintenance of free and fair competition and promotion of constructive assistance to business in harmony with law and the public interest. To this end, cooperative effort on the part of the industry with the Commission may be more effectively utilized under the rules, thereby affording increased protection to the industry and the public.

In the proceeding, instituted upon application from members of the industry, a trade practice conference was held in Chicago, Illinois, under the auspices of the Commission. Following such conference, draft of proposed rules in appropriate form was published by the Commission and made available to all industry members and other interested or affected parties upon public notice whereby they were afforded opportunity to present their views, including such pertinent information, suggestions, amendments, or objections as they desired to offer, and to be heard in the premises. Pursuant to such notice, public hearing was held in Washington, D. C., and all matters presented or otherwise received in the proceeding were duly considered by the Commission.

Thereafter, and upon full consideration of the entire matter, final

action was taken by the Federal Trade Commission, whereby it approved and received, respectively, the following trade practice rules in Group I and Group II:

THE RULES

GROUP I*

RULE 1. *Misrepresentation in General.*

It is an unfair trade practice to use, or cause or promote the use of, any advertising by radio, newspapers, magazines or other media, or any trade promotional literature, label, brand, mark, designation or representation (whether in the form of a guarantee, warranty, or otherwise), however disseminated or published,

- (a) which has the capacity and tendency or effect of misleading or deceiving the purchasing or consuming public with respect to the quality, grade, size, capacity, properties, durability, serviceability, life, or performance of any product of the industry, or with respect to the construction, constituent materials, manufacture, distribution, or terms or conditions of sale of such product; or
- (b) which is false, misleading, or deceptive in any other respect.

RULE 2. *Misrepresentation as to Character of Business.*

It is an unfair trade practice for any concern, in the course of or in connection with the distribution of industry products, to represent, directly or indirectly, that it is a manufacturer of industry products, or that it owns or controls a factory making such products, when such is not the fact, or in any other manner to misrepresent the character, extent, or type of its business.

RULE 3. *Deceptive Use of Trade or Corporate Names, or Trade-Marks, Etc.*

The use of any trade name, corporate name, trade-mark, or other trade designation which has the capacity and tendency or effect of misleading or deceiving the purchasing or consuming public as to the character, name, nature, or origin of any product of the industry, or any material used therein, or which is false or misleading in any other respect, is an unfair trade practice.

RULE 4. *Other False or Deceptive Selling Methods.*

To use or promote the use of any selling method which has the capacity and tendency or effect of misleading or deceiving the purchasing or consuming public is an unfair trade practice.

* See page VIII for headnote applicable to Group I Rules.
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RULE 5. *Guarantees, Warranties, Etc.*

(I) Guarantees which afford purchasers or users substantial and adequate protection, and are fully and fairly stated or disclosed and scrupulously adhered to by the guarantor, are desirable and recommended. It is an unfair trade practice to use or cause to be used any guarantee which is false, misleading, deceptive, or unfair to the purchasing or consuming public.

(II) UNDER THIS RULE GUARANTEES OF THE FOLLOWING TYPE OR CHARACTER SHALL NOT BE USED:

(a) Guarantees containing statements, representations, or assertions which have the capacity and tendency or effect of misleading and deceiving in any respect; or

(b) Guarantees which are so used or are of such form, text, or character as to import, imply, or represent that the guarantee is broader than is in fact true, or that the guarantee covers the entire heater or certain parts thereof which are not in fact covered, or will afford more protection to purchasers or users than is in fact true; or

(c) Guarantees in which any condition, qualification, or contingency applied by the guarantor thereto is not fully and nondeceptively stated therein, or is stated in such manner or form as to be deceptively minimized, obscured, or concealed, wholly or in part; or

(d) Guarantees which are stated, phrased, or set forth in such manner that although the statements contained therein are literally and technically true, the whole is misleading in that purchasers or users are not made sufficiently aware of certain contingencies or conditions applicable to such guarantee which materially lessen the value or protection thereof as a guarantee to purchasers or users; or

(e) Guarantees which purportedly extend for such indefinite or unlimited period of time or for such long period of years as to have the capacity and tendency or effect of thereby misleading or deceiving purchasers or users into the belief that the product has or is definitely known to have greater degree of serviceability or durability in actual use than is in fact true; or

(f) Guarantees which have the capacity and tendency or effect of otherwise misrepresenting the serviceability, durability, or lasting qualities of the product, such as, for example, a guarantee extending for a certain number of years or other long period of time when the ability of the product to last, endure, or remain serviceable for such period of time has not been established by actual experience or by competent and adequate tests definitely showing in either case that the product has such lasting qualities

under the conditions encountered or to be encountered in the respective locality where the product is sold and used under the guarantee; or

(g) Purported guarantees in the form of documents, promises, representations, or other form which are represented or held out to be guarantees when such is not the fact, or when they are service contracts of the type which are not guarantees, or when they involve any deceptive or misleading use of the word "Guarantee" or term of similar import; or

(h) Guarantees issued, or directly or indirectly caused to be used, by any member of the industry when or under which the guarantor fails or refuses to scrupulously observe his obligation thereunder or fails or refuses to make good on claims coming reasonably within the terms of the guarantee; or

(i) Guarantees which in themselves or in the manner of their use are otherwise false, misleading, or deceptive.

(III) This rule shall be applicable not only to guarantees but also to warranties, to purported warranties and guarantees, and to any promise or representation in the nature of or purporting to be a guarantee or warranty.

RULE 6. *Misuse of Terms "Close-Outs," "Discontinued Lines," "Special Bargains," Etc.*

It is an unfair trade practice to offer for sale, sell, advertise, describe, or otherwise represent regular lines of industry products as "Close-Outs," "Discontinued Lines," "Special Bargains," or by words or representations of similar import, when such are not true in fact; or to so offer for sale, sell, advertise, describe, or otherwise represent industry products where the capacity and tendency or effect thereof is to lead the purchasing or consuming public to believe such products are being offered for sale or sold at greatly reduced prices or at so-called "bargain" prices, when such is not the fact.

RULE 7. *Misrepresentation as to Installment Sales Contracts, Their Terms, Conditions, Etc.*

It is an unfair trade practice to make or publish, or cause to be made or published, directly or indirectly, any false, misleading, or deceptive statement or representation, through advertising or otherwise, concerning installment sales contracts used or their terms and conditions, including down payments, interest, carrying charges, etc., or respecting any other matters relative to such contracts or their terms and conditions.

RULE 8. *Misrepresenting Products as Conforming to Standard.*

Representing, through advertisement or otherwise, that any prod-

ucts of the industry conform to a standard recognized in or applicable to the industry when such is not the fact, with the capacity and tendency or effect of misleading or deceiving the purchasing or consuming public, is an unfair trade practice.

RULE 9. *Deception as to Rebuilt or Second-Hand Products.*

(a) It is an unfair trade practice for any member of the industry to sell, offer for sale, advertise, or otherwise represent, any product of the industry as being new when such is not true in fact.

(b) In the marketing of rebuilt or second-hand products of the industry, or parts thereof, or the marketing of products containing rebuilt or second-hand parts, it is an unfair trade practice to fail or refuse to make full and nondeceptive disclosure, by mark securely affixed to the exterior of the product in an accessible place, of the fact that such product or parts are not new but are used, rebuilt, or second-hand, as the case may be, such failure or refusal to disclose having the capacity and tendency or effect of misleading or deceiving the purchasing or consuming public.

RULE 10. *Imitation of Trade-marks, Trade Names, Etc.*

The imitation or simulation of trade-marks, trade names, brands, or labels of competitors, with the capacity and tendency or effect of misleading or deceiving the purchasing or consuming public, is an unfair trade practice.

RULE 11. *Fictitious Prices.*

It is an unfair trade practice to sell or offer for sale industry products at prices purported to be reduced from what are in fact fictitious prices, or to sell or offer for sale such products at a purported reduction in price when such purported reduction is in fact fictitious or is otherwise misleading or deceptive.

RULE 12. *Combination or Coercion to Fix Prices, Suppress Competition, or Restrain Trade.*

It is an unfair trade practice for a member of the industry, or any other person:

(a) To use, directly or indirectly, any form of threat, intimidation, or coercion against any member of the industry or other person to unlawfully fix, maintain, or enhance prices, suppress competition, or restrain trade; or

(b) To enter into or take part in, directly or indirectly, any agreement, understanding, combination, conspiracy, or concerted action with one or more members of the industry, or with one or more other persons, to unlawfully fix, maintain, or enhance prices, suppress competition, or restrain trade.

RULE 13. *Defamation of Competitors or Disparagement of Their Products.*

The defamation of competitors by falsely imputing to them dishonorable conduct, inability to perform contracts, questionable credit standing, or by other false representations, or the false disparagement of competitors' products in any respect, or of their business methods, selling prices, values, credit terms, policies, or services, is an unfair trade practice.

RULE 14. *Substitution of Products.*

The practice of shipping or delivering products which do not conform to samples submitted, to specifications upon which the sale is consummated, or to representations made prior to securing the order, without the consent of the purchasers to such substitution, or with the capacity and tendency or effect of misleading or deceiving the purchasing or consuming public, is an unfair trade practice.

RULE 15. *False Invoicing.*

It is an unfair trade practice to withhold from or insert in invoices any statements or information by reason of which omission or insertion a false record is made, wholly or in part, of the transactions represented on the face of such invoices, with the effect of thereby misleading or deceiving the purchasing or consuming public.

RULE 16. *Inducing Breach of Contract.*

It is an unfair trade practice to induce or attempt to induce the breach of existing lawful contracts between competitors and their customers, or their suppliers, by any false or deceptive means whatsoever, or to interfere with or obstruct the performance of any such contractual duties or services by any such means, with the purpose and effect of unduly hampering, injuring, or prejudicing competitors in their business.

RULE 17. *Use of Lottery Schemes.*

The offering or giving of prizes, premiums, or gifts in connection with the sale of industry products, or as an inducement thereto, by any scheme which involves lottery or scheme of chance, is an unfair trade practice.

RULE 18. *Commercial Bribery.*

It is an unfair trade practice for a member of the industry, directly or indirectly, to give, or offer to give, or permit to be given, money or anything of value to agents, employees, or representatives of customers or prospective customers, or to agents, employees, or representatives of competitors' customers or prospective customers, without the knowledge of their employers or principals, as an inducement to influence their employers or principals to purchase or contract to

purchase products manufactured or sold by such industry member or the maker of such gift or offer, or to influence such employers or principals to refrain from dealing in the products of competitors or from dealing or contracting to deal with competitors.

RULE 19. Enticing Away Employees of Competitors.

It is an unfair trade practice for any member of the industry willfully to entice away employees of competitors with the purpose and effect of thereby unduly hampering or injuring competitors in their business and destroying or substantially lessening competition.

RULE 20. Procurement of Competitors' Confidential Information by Unfair Means and Wrongful Use Thereof.

It is an unfair trade practice for any member of the industry to obtain information concerning the business of a competitor by bribery of an employee or agent of such competitor, by false or misleading statements or representations, by the impersonation of one in authority, or by any other unfair means, and to use the information so obtained in such manner as to injure said competitor in his business or to suppress competition or unreasonably restrain trade.

RULE 21. Unfair Threats of Infringement Suits.

The circulation of threats of suit for infringement of patents or trade-marks among customers or prospective customers of competitors, not made in good faith but for the purpose or with the effect of thereby harassing or intimidating such customers or prospective customers, or of unduly hampering, injuring, or prejudicing competitors in their business, is an unfair trade practice.

RULE 22. Coercing Purchase of One Product as a Prerequisite to the Purchase of Other Products.

The practice of coercing the purchase of one or more products as a prerequisite to the purchase of one or more other products, where the effect may be to substantially lessen competition or tend to create a monopoly or to unreasonably restrain trade, is an unfair trade practice.

RULE 23. Unlawful Interference.

It is an unfair trade practice for any member of the industry, by means of any monopolistic practices, or through combination, conspiracy, coercion, boycott, threats, or any other unlawful means, directly or indirectly, to interfere with a competitor's right to purchase his materials and supplies from whomsoever he chooses, or to sell to whomsoever he chooses.

RULE 24. Selling Below Cost.

The practice of selling industry products below the seller's cost, when pursued with wrongful intent of thereby injuring a competitor

and where the effect of such practice is to unreasonably restrain trade, tend to create a monopoly, or substantially lessen competition, is an unfair trade practice.

This rule is not to be construed as prohibiting all sales below cost, but only such selling below the seller's cost as is resorted to and pursued as a monopolistic practice with the wrongful intent referred to and coupled with the effect of unreasonably restraining trade, tending to create a monopoly, or substantially lessening competition.

The costs referred to in the rule are actual costs of the respective seller and not some other figure or average costs in the industry, determined by an industry cost survey or otherwise.

RULE 25. Discrimination.

(a) Prohibited Discriminatory Prices, or Rebates, Refunds, Discounts, Credits, Etc., Which Effect Unlawful Price Discrimination.—

It is an unfair trade practice for any member of the industry engaged in commerce,¹ in the course of such commerce, to grant or allow, secretly or openly, directly or indirectly, any rebate, refund, discount, credit, purported allowance for alleged imperfect workmanship or defective material, or other form of price differential, where such rebate, refund, discount, credit, purported allowance for alleged imperfect workmanship or defective material, or other form of price differential, effects a discrimination in price between different purchasers of goods of like grade and quality, where either or any of the purchases involved therein are in commerce,¹ and where the effect thereof may be substantially to lessen competition or tend to create a monopoly in any line of commerce,¹ or to injure, destroy, or prevent competition with any person who either grants or knowingly receives the benefit of such discrimination, or with customers of either of them: *Provided, however—*

(1) That the goods involved in any such transaction are sold for use, consumption, or resale within any place under the jurisdiction of the United States;

(2) That nothing herein contained shall prevent differentials which make only due allowance for differences in the cost of manufacture, sale, or delivery resulting from the differing methods or quantities in which such commodities are to such purchasers sold or delivered;

(3) That nothing herein contained shall prevent persons engaged in selling goods, wares, or merchandise in commerce¹ from selecting their own customers in bona fide transactions and not in restraint of trade;

(4) That nothing herein contained shall prevent price changes from time to time where made in response to changing conditions

¹ See footnote, p. 415.

affecting either (a) the market for the goods concerned, or (b) the marketability of the goods, such as, but not limited to, actual or imminent deterioration of perishable goods, obsolescence of seasonal goods, distress sales under court process, or sales in good faith in discontinuance of business in the goods concerned.

(b) *Prohibited Brokerage and Commissions.*—It is an unfair trade practice for any member of the industry engaged in commerce,¹ in the course of such commerce, to pay or grant, or to receive or accept, anything of value as a commission, brokerage, or other compensation, or any allowance or discount in lieu thereof, except for services rendered in connection with the sale or purchase of goods, wares, or merchandise, either to the other party to such transaction or to an agent, representative, or other intermediary therein where such intermediary is acting in fact for or in behalf, or is subject to the direct or indirect control, of any party to such transaction other than the person by whom such compensation is so granted or paid.

(c) *Prohibited Advertising or Promotional Allowances, Etc.*—It is an unfair trade practice for any member of the industry engaged in commerce¹ to pay or contract for the payment of advertising or promotional allowances or any other thing of value to or for the benefit of a customer of such member in the course of such commerce as compensation or in consideration for any services or facilities furnished by or through such customer in connection with the processing, handling, sale, or offering for sale of any products or commodities manufactured, sold, or offered for sale by such member, unless such payment or consideration is available on proportionally equal terms to all other customers competing in the distribution of such products or commodities.

(d) *Prohibited Discriminatory Services or Facilities.*—It is an unfair trade practice for any member of the industry to discriminate in favor of one purchaser against another purchaser or purchasers of a commodity bought for resale, with or without processing, by contracting to furnish or furnishing, or by contributing to the furnishing of, any services or facilities connected with the processing, handling, sale, or offering for sale of such commodity so purchased upon terms not accorded to all purchasers on proportionally equal terms.

(e) *Inducing or Receiving an Illegal Discrimination in Price.*—It is an unfair trade practice for any member of the industry engaged in commerce,¹ in the course of such commerce, knowingly to induce or receive a discrimination in price which is prohibited by the foregoing provisions of this Rule 25.

(f) *Purchases by Schools, Colleges, Universities, Public Libraries,*

¹ See footnote, p. 415.

Churches, Hospitals, and Charitable Institutions Not Operated for Profit.—The foregoing provisions of this Rule 25 relate to practices within the purview of the Robinson-Patman Antidiscrimination Act, which Act and the application thereunder of this Rule 25 are subject to the limitations expressed in the amendment to such Robinson-Patman Antidiscrimination Act, which amendment was approved May 26, 1938, and reads as follows:

"Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That nothing in the Act approved June 19, 1936 (Public, Numbered 692, Seventy-fourth Congress, second session), known as the Robinson-Patman Antidiscrimination Act, shall apply to purchases of their supplies for their own use by schools, colleges, universities, public libraries, churches, hospitals, and charitable institutions not operated for profit." (52 Stat. 446; United States Code, 1940 Edition, Title 15, Sec. 13c.)

RULE 26. Price Discrimination by Making Small Deliveries at Prices Applicable Only to Larger Quantities.

It is an unfair trade practice to discriminate in price by making small deliveries to some purchasers at prices applicable only to purchases and deliveries in larger quantities where such practice effects a discrimination in price as in the case of a discriminatory rebate, refund, discount, credit, service, or facility, of the type contrary to the provisions of Rule 25.

RULE 27. Discriminatory Returns.

It is an unfair trade practice for any member of the industry engaged in commerce¹ to discriminate in favor of one customer-purchaser against another customer-purchaser of products bought from such member for resale, by contracting to furnish, or furnishing in connection therewith, upon terms not accorded to all customer-purchasers on proportionally equal terms, the service or facility whereby such favored purchaser is accorded the privilege of returning products so purchased and receiving therefor credit or refund of purchase price.

However, nothing in any of the rules herein shall be construed as prohibiting the return of merchandise by purchaser, for credit or refund of purchase price, when and because such merchandise has not been properly tagged, labeled, or marked by the seller in accordance with the requirements of these rules, or has been otherwise falsely or deceptively tagged, labeled, or represented, or when and because such merchandise is defective in material, workmanship, or in any other respect, contrary to guarantee, warranty, or purchase contract.

¹ As here used, the word "commerce" means trade or commerce among the several States and Territories including the District of Columbia, in accordance with the full scope of the definition of such term found in Section 1 of the Clayton Act (38 Stat. 730; 15 USCA Sec. 12).

RULE 28. Deception Through Failure to Differentiate Between Wholesale and Retail Transactions.

Where industry products are sold at wholesale and at retail in the same establishment of a member of the industry, the commingling of the two types of business in such manner as to have the capacity and tendency or effect of misleading or deceiving purchasers or prospective purchasers is an unfair trade practice.

RULE 29. Aiding or Abetting Use of Unfair Trade Practices.

It is an unfair trade practice for any person to aid, abet, coerce, or induce another, directly or indirectly, to use or promote the use of any unfair trade practice specified in these rules.

GROUP II*

RULE A. Price Lists.

(a) The industry approves the practice of each individual member of the industry independently publishing and circulating to the purchasing trade his own price lists.

(b) The industry approves the practice of making the terms of sale a part of all published price schedules.

RULE B. Repudiation of Contracts.

Lawful contracts are business obligations which should be performed in letter and in spirit. The repudiation of contracts by sellers on a rising market or by buyers on a declining market is condemned by the industry.

RULE C. Maintenance of Accurate Records.

It is the judgment of the industry that each member should independently keep proper and accurate records for determining his costs.

RULE D. Disputes.

The industry approves the practice of handling business disputes between members of the industry and their customers in a fair and reasonable manner, coupled with a spirit of moderation and good will, and every effort should be made by the disputants themselves to compose their differences. If unable to do so they should, if possible, submit these disputes to arbitration.

RULE E. Fictitious Bids.

When submitting bids, all bidders should make their bids in good faith and on a fully competitive basis. The use by any member of the industry of fake or fictitious bids, having the tendency or effect of destroying competition and securing unfair advantage, is condemned by the industry.

* See page VIII for headnote applicable to Group II Rules.

RULE F. Coercion in Sales.

The use of buying power to force uneconomic or unjust terms of sale upon sellers, and the use of selling power to force uneconomic or unjust terms of sale upon buyers, are condemned by the industry.

Promulgated by the Federal Trade Commission January 11, 1945.

TRADE PRACTICE RULES

FOR THE

RAZOR AND RAZOR BLADE INDUSTRY

PROMULGATED JUNE 19, 1945

STATEMENT BY THE COMMISSION

Trade practice rules for the Razor and Razor Blade Industry, as hereinafter set forth, are promulgated by the Federal Trade Commission under its trade practice conference procedure.

The industry to which the rules apply is that engaged in the business of manufacturing or marketing razor blades and razors, including parts therefor. Such products of the industry embrace all types of razor blades and razors (exclusive, however, of electric shavers). Yearly volume of sales of the industry's products is reported as exceeding \$60,000,000 at retail prices.

The rules are directed to the maintenance of free and fair competition for the protection of the industry and the buying public. Various trade evils, discriminatory methods, and unfair or deceptive practices are listed and proscribed. Other provisions are also included which supply additional protection. Of special importance to this industry is Rule 14 which contains provisions against passing off as and for regular or first quality products, such blades or razors as are defective, substandard, or "seconds." A substantial guide is also provided therein for differentiating between regular or first quality products and those which are substandard, defective, or "seconds." Likewise, the question peculiar to razor blades of what constitutes a "thin" blade is covered in Rule 4, under which blades having a thickness greater than .004 of an inch are not to be deceptively sold as "thin" blades.

The proceeding for establishment of rules for the industry was instituted upon application from industry members. In the course thereof a general trade practice conference under the auspices of the Federal Trade Commission was held in New York City. Following such conference, draft of proposed rules in appropriate form was published by the Commission and made available to all members of the industry and other interested or affected parties upon public notice whereby they were afforded opportunity to present their views, including such pertinent information, suggestions, or objections as they desired to offer, and to be heard in the premises. Pursuant to such notice, hearing was held in Washington, D. C., and all matters presented in the proceeding were duly received and given appropriate attention.

Thereafter, and upon full consideration of the entire matter, final

action was taken by the Federal Trade Commission whereby it approved and received, respectively, the trade practice rules appearing in Group I and Group II below:

THE RULES¹

GROUP I*

RULE 1. *Misrepresentation as to Character of Business.*

(a) It is an unfair trade practice for any person, partnership, corporation, or other concern, by trade or corporate name or otherwise, to hold himself or itself out as being a manufacturer or producer of razors, razor blades, or allied products when such is not true in fact.

(b) It is an unfair trade practice for any person, partnership, corporation, or other concern, in the conduct of business, to misrepresent, directly or indirectly, in advertising, directory listings, labeling, or otherwise, the character, nature, or status of the business of such person, partnership, corporation, or other concern.

RULE 2. *Defamation of Competitors or Disparagement of Their Products.*

The defamation of competitors by falsely imputing to them dishonorable conduct, inability to perform contracts, questionable credit standing, or by other false representations, or the false disparagement of competitors' products in any respect, or of their business methods, selling prices, values, credit terms, policies, or services, is an unfair trade practice.

RULE 3. *Commercial Bribery.*

It is an unfair trade practice for a member of the industry, directly or indirectly, to give, or offer to give, or permit or cause to be given, money or anything of value to agents, employees, or representatives of customers or prospective customers, or to agents, employees, or representatives of competitors' customers or prospective customers, without the knowledge of their employers or principals, as an inducement to influence their employers or principals to purchase or contract to purchase products manufactured or sold by such industry member or the maker of such gift or offer, or to influence such employers or principals to refrain from dealing in the products of competitors or from dealing or contracting to deal with competitors.

¹ Such adjustment as may be necessary on the part of members of the industry to bring their practices into full harmony with these rules shall be made as promptly as possible and within 60 days hereof. This shall not, however, be construed as meanwhile permitting use of practices which are false, misleading, or deceptive, or which are otherwise contrary to law.

* See page VIII for headnote applicable to Group I Rules.

RULE 4. Misrepresentation in General.

It is an unfair trade practice for any member of the industry to use, or cause or promote the use of, any trade promotional literature, advertising matter, testimonial, guarantee, warranty, mark, brand, label, designation, or representation, however disseminated or published, which has the capacity and tendency or effect of misleading or deceiving the purchasing or consuming public—

(a) with respect to the type, kind, grade, quality, composition, weight, thickness,* rust resistant or other properties, quantity, use, size, design, construction, material, finish, strength, tests, durability, serviceability, flexibility, sharpness, extent or character of performance, price, value, content, or origin; or

(b) with respect to the type, kind, brand, composition, or quality of steel or substance of which a razor blade, razor, or other industry product is manufactured, or the character, extent, or type of sharpening or other treatment applied to any such products; or

(c) with respect to any guarantee, warranty, endorsement, acceptance, approval, or use of any industry product by any person, organization, or group; or

(d) with respect to the manufacture, distribution, or marketing of any industry product; or in any other respect.

*NOTE.—“Thin” Blades—(Among the misrepresentations proscribed by this rule are designations or representations to the effect that blades are “thin” or are “thin blades” when in fact such blades have a thickness greater than that recognized in the industry as properly applicable to “thin blades.” Under such recognized practice “thin” blades should not have a thickness greater than .004 of an inch.)

RULE 5. Substitution of Products.

The practice of shipping or delivering products which do not conform to samples submitted, to specifications upon which the sale is consummated, or to representations made prior to securing the order, without the consent of the purchasers to such substitutions, or with the capacity and tendency or effect of misleading or deceiving the purchasing or consuming public, is an unfair trade practice.

RULE 6. Misuse of the Word “Free,” Etc.

It is an unfair trade practice for any member of the industry to use the term “free,” or any other term or representation of similar import or meaning, to describe, designate, or refer to any industry product which is not given to the recipient thereof without cost and unconditionally.

RULE 7. Use of Lottery Schemes, Etc.

It is an unfair trade practice to sell, distribute, or promote the sale or distribution of any industry product or other merchandise by means of a game of chance, gift enterprise, or lottery scheme.

RULE 8. Deceptive Pricing.

(a) It is an unfair trade practice for any member of the industry to represent, in advertising or otherwise, that the price of any industry product has been reduced from what is in fact a fictitious price, or that such price is a reduced or a special price when it is in fact the regular selling price of such product, or that the regular price thereof is higher when such is not the fact, or otherwise to falsely or deceptively represent the past or current price of any industry product.

(b) It is an unfair trade practice for any member of the industry, directly or indirectly, to use or to supply to dealers, or to aid or assist in the use of, price tags, labels, or similar devices which are false or fictitious, or which such member has reason to believe are intended to be used or will be used by dealers or salesmen for the purpose of misleading or deceiving the purchasing or consuming public in regard to price, value, or in any other material respect.

RULE 9. Selling Below Cost.

The practice of selling industry products below the seller's cost with the intent and with the effect of injuring a competitor and where the effect may be substantially to lessen competition or tend to create a monopoly or unreasonably restrain trade is an unfair trade practice. All elements recognized by good accounting practice as proper elements of such cost shall be included in determining cost under this rule. The costs, however, which are referred to in the rule, are actual costs of the respective seller and not some other figure or average costs in the industry determined by an industry cost survey or otherwise.

RULE 10. Discrimination.

(a) *Prohibited Discriminatory Prices, or Rebates, Refunds, So-called Free Goods, Discounts, Credits, Etc., Which Effect Unlawful Price Discrimination.*—It is an unfair trade practice for any member of the industry engaged in commerce,² in the course of such commerce, to grant or allow, secretly or openly, directly or indirectly, any rebate, refund, so-called free goods, discount, credit, or other form of price differential, where such rebate, refund, so-called free goods, discount, credit, or other form of price differential, effects a discrimination in price between different purchasers of goods of like grade and quality, where either or any of the purchases involved therein are in commerce,² and where the effect thereof may be substantially to lessen competition or tend to create a monopoly in any line of commerce,² or to injure, destroy, or prevent competition with any person who either grants or knowingly receives the benefit of such discrimination, or with customers of either of them: *Provided, however—*

(1) That the goods involved in any such transaction are sold for use, consumption, or resale within any place under the juris-

² See footnote, p. 460.

diction of the United States;

(2) That nothing herein contained shall prevent differentials which make only due allowance for differences in the cost of manufacture, sale, or delivery resulting from the differing methods or quantities in which such commodities are to such purchasers sold or delivered;

(3) That nothing herein contained shall prevent persons engaged in selling goods, wares, or merchandise in commerce² from selecting their own customers in bona fide transactions and not in restraint of trade;

(4) That nothing herein contained shall prevent price changes from time to time where made in response to changing conditions affecting either (a) the market for the goods concerned, or (b) the marketability of the goods, such as, but not limited to, actual or imminent deterioration of perishable goods, obsolescence of seasonal goods, distress sales under court process, or sales in good faith in discontinuance of business in the goods concerned.

(b) *Prohibited Brokerage and Commissions.*—It is an unfair trade practice for any member of the industry engaged in commerce,² in the course of such commerce, to pay or grant, or to receive or accept, anything of value as a commission, brokerage, or other compensation, or any allowance or discount in lieu thereof, except for services rendered in connection with the sale or purchase of goods, wares, or merchandise, either to the other party to such transaction or to an agent, representative, or other intermediary therein where such intermediary is acting in fact for or in behalf, or is subject to the direct or indirect control, of any party to such transaction other than the person by whom such compensation is so granted or paid.

(c) *Prohibited Advertising or Promotional Allowances, Etc.*—It is an unfair trade practice for any member of the industry engaged in commerce² to pay or contract for the payment of advertising or promotional allowances or any other thing of value to or for the benefit of a customer of such member in the course of such commerce as compensation or in consideration for any services or facilities furnished by or through such customer in connection with the processing, handling, sale, or offering for sale of any products or commodities manufactured, sold, or offered for sale by such member, unless such payment or consideration is available on proportionally equal terms to all other customers competing in the distribution of such products or commodities.

(d) *Prohibited Discriminatory Services or Facilities.*—It is an unfair trade practice for any member of the industry to discriminate in favor of one purchaser against another purchaser or

² See footnote, p. 460.

purchasers of a commodity bought for resale, with or without processing, by contracting to furnish or furnishing, or by contributing to the furnishing of, any services or facilities connected with the processing, handling, sale, or offering for sale of such commodity so purchased upon terms not accorded to all purchasers on proportionally equal terms.

(e) *Inducing or Receiving an Illegal Discrimination in Price.*—It is an unfair trade practice for any member of the industry engaged in commerce,² in the course of such commerce, knowingly to induce or receive a discrimination in price which is prohibited by the foregoing provisions of this Rule 10.

(f) *Purchases by Schools, Colleges, Universities, Public Libraries, Churches, Hospitals, and Charitable Institutions Not Operated for Profit.*—The foregoing provisions of this Rule 10 relate to practices within the purview of the Robinson-Patman Antidiscrimination Act, which Act and the application thereunder of this Rule 10 are subject to the limitations expressed in the amendment to such Robinson-Patman Antidiscrimination Act, which amendment was approved May 26, 1938, and reads as follows:

"Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That nothing in the Act approved June 19, 1936 (Public, Numbered 692, Seventy-fourth Congress, second session), known as the Robinson-Patman Antidiscrimination Act, shall apply to purchases of their supplies for their own use by schools, colleges, universities, public libraries, churches, hospitals, and charitable institutions not operated for profit." (52 Stat. 446; United States Code, 1940 Edition, Title 15, Sec. 13c.)

RULE 11. *Imitation or Simulation of Trade-marks, Trade Names, Etc.*

The imitation or simulation of the trade-marks, trade names, brands, or labels of competitors, with the capacity and tendency or effect of misleading or deceiving the purchasing or consuming public, is an unfair trade practice.

RULE 12. *Misrepresentation as to Earnings of Sales Representatives.*

It is an unfair trade practice for any member of the industry to make or publish, or cause to be made or published, directly or indirectly, any false, misleading, or deceptive statement or representation, by way of advertisement or otherwise, concerning—

(a) the salary, commission, income, earnings, or other remuneration which agents, canvassers, solicitors, or other sales representatives receive or may receive; or

² See footnote, p. 460.

(b) the chances or opportunities for such remuneration.

RULE 13. Enticing Away Employees of Competitors.

Wilfully enticing away the employees of competitors with the purpose and effect of unduly injuring or hampering competitors in their business and destroying or substantially lessening competition is an unfair trade practice.

RULE 14. Passing Off Substandard or Defective Products as and for Regular or First Quality Merchandise.

A. It is an unfair trade practice to advertise, offer for sale, sell, or cause to be sold razors or razor blades which are "seconds," or which are substandard, defective, or of low quality as and for razors or blades of higher grade or quality or as and for razors or blades which are not substandard, defective, or "seconds."

B. If and when razors or razor blades which are "seconds," substandard, or defective are placed on the market, they should be marked as such clearly and conspicuously on the outside of the sealed or closed wrapper in which they are sold to the purchasing or consuming public; and it is an unfair trade practice to conceal the fact that such razors or razor blades are "seconds," substandard, or defective, such concealment having the capacity and tendency or effect of misleading or deceiving the purchasing or consuming public.

NOTE I.—As used in this rule the term "substandard" as applied to razor blades shall embrace razor blades which are "seconds" or which are defective for any reason, including steel razor blades which are defective and inferior by reason of:

(a) The steel of which the blade is manufactured not being of uniform well spheroidized cementite structure with carbide particles of uniform size and distribution; or not having proper carbon content (carbon content of not less than 1.15% or more than 1.35% is deemed generally desirable and proper); or

(b) The cutting edge or edges not having been properly hardened and tempered equal to a hardness of 90 to 92 on a Rockwell 15N Scale, Superficial Hardness Tester; or

(c) The flexible type blade not having been properly tempered so as to permit the blade to flex sufficiently without breaking in the razor for which it is intended or sold; or

(d) The blade not having been evenly or keenly sharpened; or

(e) The cutting edge or edges showing nicks with a dimension greater than .005 of an inch, or wire edges, when viewed microscopically at a magnification of 50 diameters; or

(f) Not having proper dimensions or measurements necessary to fit effectively and in a precise manner, without excessive or insufficient blade exposure, the razor for which it is intended or sold; or

(g) Not being free from rust, or not having been effectively protected against rust when placed on the market.

NOTE II.—As used in this rule the word "substandard" as applied to safety razors shall be construed to include the following:

Safety razors which are not of such construction and material as to assure an adequate and effective blade seating and blade exposure; or which are subject to warping to such an extent as to prevent an adequate and effective blade seating or blade exposure; or which have such rough edges, burrs, pin holes, or other imperfections or such flaws, defects, or susceptibility to rusting as to materially affect their usability adversely; or which are of such construction, material, or workmanship as not to permit of tight assembly without breaking or cracking; or which are "seconds" or not first quality products by reason of such defective or inferior material, construction, or workmanship.

RULE 15. Razor Blades for Industrial Use or for Purposes Other than Human Shaving.

To the end that confusion and deception may be avoided and prevented, razor blades placed on the market to be sold for industrial uses only or for uses other than human shaving shall be suitably marked to show such fact, as for example: "For Industrial Use Only." The selling of any such razor blades as or for razor blades manufactured or suitable for human shaving when such is not the fact, is an unfair trade practice.

GROUP II*

RULE A. Repudiation of Contracts.

Lawful contracts are business obligations which should be performed in letter and in spirit. The repudiation of contracts by sellers on a rising market or by buyers on a declining market is condemned by the industry.

RULE B. Arbitration.

The industry approves the practice of handling business disputes between members of the industry and their customers in a fair and reasonable manner, coupled with a spirit of moderation and good will, and every effort should be made by the disputants themselves to compose their differences. If unable to do so they should, if possible, submit these disputes to arbitration.

RULE C. Cost Records.

It is the judgment of the industry that each member should independently keep proper and accurate records for determining his costs.

RULE D. Proper Identification of Origin of Blades and Suitable Packaging.

In the interest of identification and the prevention of confusion and deception, all steel razor blades when placed on the market should be impressed or etched with the name or identifying trade-mark of the

* See page VIII for headnote applicable to Group II Rules.

manufacturer or of the responsible distributor introducing such blade into the channels of trade. Each packet of razor blades should be marked to show the number of blades contained in the package. Each blade should also be suitably wrapped or packaged to afford security in handling and protection against damage or dulling contact with the cutting edge of the blade.

Promulgated by the Federal Trade Commission June 19, 1945.

TRADE PRACTICE RULES

FOR THE

TUNA INDUSTRY (Revised and Extended)

PROMULGATED JUNE 23, 1945

STATEMENT BY THE COMMISSION

Trade practice rules for the Tuna Industry are promulgated by the Federal Trade Commission in the revised and extended form hereinafter set forth. Such rules supersede those promulgated and issued on August 27, 1940.

Changes embodied in the present rules relate for the most part to "Grated or Shredded Tuna," and to the strengthening of provisions against misrepresentation and deception. The several amendments made affect Rules 1, 2, 5, 6, 7, 9, 12, and 21. The other rules are incorporated without change from those issued August 27, 1940.

Protection of the industry, trade, and the purchasing public from the harmful effects of unfair trade practices is a primary object of the rules. The provisions as promulgated relate to the sale and distribution of tuna and tuna products by the processors and canners and by jobbers, distributors, dealers, importers, or other marketers. Such tuna is cooked and packed with edible oil and salt, and according to available information the most recent yearly pack amounted to 3,600,000 cases having a sales value to canners of approximately \$42,000,000.

Proceedings in the matter were had in cooperation with the industry, including the holding of a trade practice conference and other hearings. As a result thereof, fair trade practice rules for this industry were placed in operation in 1940. The recent extension of such rules was applied for by members of the industry, and hearing in respect thereto was held by the Commission on March 26, 1945, in Washington, D. C. Prior public notice was also issued by the Commission and all interested or affected persons or concerns were afforded opportunity to present their views and suggestions by brief, memorandum, or other communication, and to be heard.

All matters have been given attention, and upon full consideration the rules were revised and extended as hereinafter set forth. The rules appearing in Group I and Group II, including those amended, were respectively approved and received by the Federal Trade Commission and are promulgated as trade practice rules for the Tuna Industry.

These rules promulgated by the Commission are designed to foster and promote the maintenance of fair competitive conditions in the interest of the industry and the public. Their operation is to be

directed toward this end and is not to permit of the use of any practice which suppresses competition, restrains trade, fixes or controls price through combination or agreement, or which otherwise injures, destroys, or prevents competition.

The rules do not in any respect supplant, or relieve anyone of the necessity of complying with, the requirements of the pure food laws or other provision of law.

THE RULES

GROUP I*

RULE 1. *Definitions.*

For the purpose of these rules and in their application the following definitions respecting canned tuna and canned tuna products shall apply:

(a) *FANCY TUNA:*

(1) The term "Fancy Tuna" as herein used shall be deemed to be the descriptive term for choice cuts of cooked tuna, from fish weighing not more than sixty (60) pounds round weight, packed in cans with large pieces of solid meat and with one or two small pieces of solid meat added, if necessary, to bring the contents up to required net weight, but not including any flakes (nor any grated or shredded tuna) added at the time of packing.

(2) The term "Fancy White Meat Tuna" as herein used shall be deemed to be the descriptive term for like choice cuts of albacore (*Germo alalunga*) packed in the same manner.

(3) The expression "choice cuts" means large choice pieces of cooked tuna composed of tender solid meat of selected light color and fine texture, and free from dark meat, bones, skin, extraneous tissue, debris, and any substance or condition impairing quality.

(b) *STANDARD TUNA:*

(1) The term "Standard Tuna" as herein used shall be deemed to be the descriptive term for wholesome cooked tuna meat, not restricted as to size of fish, which when packed contains at least 75% large pieces of solid meat and is free from dark meat, bones, skin, extraneous tissue, and debris.

(2) The term "Standard White Meat Tuna" as herein used shall be deemed to be the descriptive term for like large pieces of wholesome solid albacore (*Germo alalunga*), packed in the same manner and free from dark meat, bones, skin, extraneous tissue, and debris.

* See page VIII for headnote applicable to Group I Rules.

(c) *GRATED or SHREDDED TUNA:*

(1) The term "Grated Tuna" or "Shredded Tuna" as herein used shall be deemed to be the descriptive term for small uniform pieces of wholesome cooked tuna meat produced in this form by a mechanical process. The pieces shall be free from dark meat, bones, skin, extraneous tissue, and debris, and tuna meat used for this type of pack shall be of a kind and quality at least equal to that employed in packing "Standard Tuna" as described in subsection (b) (1) above.

(2) The term "Grated White Meat Tuna" or "Shredded White Meat Tuna" as herein used shall be deemed to be the descriptive term for like small uniform pieces of wholesome cooked albacore (*Germo alalunga*), prepared and packed in the same manner, and free from dark meat, bones, skin, extraneous tissue, and debris. The tuna meat used shall be of a kind and quality at least equal to that employed in packing "Standard White Meat Tuna" as described in subsection (b) (2) above.

(d) *TUNA FLAKES:*

(1) The term "Tuna Flakes" or "Flakes" as herein used shall be deemed to be the descriptive term for small pieces of wholesome cooked tuna meat from the whole tuna, or from parts of tuna, not utilized in the packing of fancy or standard grades of tuna but free from dark meat, bones, skin, extraneous tissue, and debris.

(2) The term "White Meat Flakes" as herein used shall be deemed to be the descriptive term for like small pieces of wholesome cooked albacore (*Germo alalunga*), packed in the same manner and free from dark meat, bones, skin, extraneous tissue, and debris.

(e) *FISHES CLASSED AS TUNA:*

The following species shall be deemed to be "tuna":

- (1) *Germo alalunga* (Albacore)
- (2) *Neothunnus macropterus* (Yellowfin)
- (3) *Thunnus thynnus* (Bluefin)
- (4) *Katsuwonus pelamis* (Striped Tuna, Skipjack, or Aku)
- (5) *Thunnus orientalis* (Oriental Tuna)

RULE 2. *Deceptive Designations.*

It is an unfair trade practice to sell, offer for sale, advertise, describe, or otherwise represent, directly or indirectly, any industry product as "Fancy Tuna," "Fancy White Meat Tuna," "Standard Tuna," "Standard White Meat Tuna," "Grated Tuna," "Shredded Tuna," "Grated White Meat Tuna," "Shredded White Meat Tuna," "Tuna Flakes," "Flakes," "White Meat Flakes," or by similar designation, when such product does not conform to the definitions set out in Rule 1 above.

RULE 3. Deceptive Concealment of Species and Quality.

In advertising, describing, representing, offering for sale or selling canned tuna or canned tuna products, it is an unfair trade practice to deceptively conceal or fail or refuse to disclose the species of tuna used in the product and the grade or quality thereof, or to conceal or fail or refuse to disclose any other material fact respecting the product, where such concealment or nondisclosure is practiced with the capacity and tendency or effect of thereby misleading or deceiving the purchasing or consuming public.

RULE 4. Misuse of Terms "Extra Fancy," "Extra Select," Etc.

It is an unfair trade practice to sell, offer for sale, advertise, describe, or otherwise represent any canned tuna or canned tuna product as "Extra Fancy," "Extra Select," "Extra Select Fancy," "Extra Fancy Fillet," "Extra Quality," "De Luxe Fancy," "De Luxe," "Select," "Choice," or by similar designation or other representation, with the capacity and tendency or effect of misleading or deceiving the purchasing or consuming public into the belief that such canned tuna or canned tuna product is of a quality superior to either the fancy grade or the standard grade of tuna, or to some other grade, kind, or character of tuna, when such is not true in fact; or into any other erroneous belief.

RULE 5. Misrepresentation of Industry Products in General.

The practice of selling, advertising, describing, or otherwise representing canned tuna or canned tuna products in a manner which is calculated to mislead or deceive or has the capacity and tendency or effect of misleading or deceiving the purchasing or consuming public with respect to the species of tuna contained therein, or with respect to the character, nature, content, brand, grade, quality, quantity, origin, substance, material, size, preparation, packing, distribution, or manufacture of such products, or ingredients thereof, or in any other material respect, is an unfair trade practice.

RULE 6. Deceptive Depictions in General.

It is an unfair trade practice to use in relation to industry products any photograph, cut, engraving, insignia, design, illustration, or pictorial or other depiction or device (in catalogs, sales literature, advertisements, or other representations) which has the capacity and tendency or effect of misleading or deceiving the purchasing or consuming public respecting the species of tuna packed, or respecting the character, nature, content, brand, grade, quality, quantity, origin, substance, material, size, preparation, packing, distribution, or manufacture of any products of the industry, or ingredients thereof; or which is false, misleading, or deceptive in any other respect.

RULE 7. Misuse of Term "Tonno," Foreign Insignia, Etc.

(a) It is an unfair trade practice to use the term "Tonno," or designation of similar import, as descriptive of canned tuna or canned tuna products when such products are not composed of tuna meat in large solid pieces packed with olive oil and salt. This shall not be construed as excluding the addition of one or two small pieces of solid meat where necessary to bring the contents up to the required net weight. No flakes (nor any grated or shredded tuna), however, shall be added at the time of packing, and the product as packed shall be free from dark meat, bones, skin, extraneous tissue, and debris.

(b) It is also an unfair trade practice to use such term "Tonno," or designation of similar import, or any pictorial or other representations, foreign insignia or insignia indicating foreign origin, or foreign words, phrases, or other devices, in such manner as to have the capacity and tendency or effect (1) of confusing, misleading, or deceiving the purchasing or consuming public into the belief that the tuna in the product so described or referred to is from waters off the coast of Italy or other foreign country, or that such product is packed in or imported from Italy or other foreign country, when such is not the fact; or (2) of confusing, misleading, or deceiving the purchasing or consuming public into any other erroneous belief.

RULE 8. Imitation of Trade-marks, Trade Names, Etc.

The imitation or simulation of the trade-marks, trade names, brands, or labels of competitors, with the capacity and tendency or effect of misleading or deceiving the purchasing or consuming public, is an unfair trade practice.

RULE 9. Use of Slack-Filled or Short-Weight Containers.

It is an unfair trade practice to sell, advertise, describe, or otherwise represent, canned tuna or canned tuna products packed in slack-filled or short-weight containers, or packed in odd-sized containers simulating in size or shape standard sized or shaped containers which are known to the public as standard containers of definite capacity, with the capacity and tendency or effect of misleading or deceiving the purchasing or consuming public as to the contents of such containers or the amount of tuna or tuna products contained therein; or which are packed in containers so made, formed, or filled as to be otherwise misleading.

RULE 10. Defamation of Competitors or Disparagement of Their Products.

The defamation of competitors by falsely imputing to them dishonorable conduct, inability to perform contracts, questionable credit standing, or by other false representations, or the false disparagement of the grade, quality, or manufacture of the products of competitors, or of

their business methods, selling prices, values, credit terms, policies, or services, is an unfair trade practice.

RULE 11. *Substituting Inferior Products for Those Ordered.*

The practice of using or substituting any product of the industry inferior in grade or quality to that specified by the purchaser, without the consent of said purchaser to such use or substitution, or with the capacity and tendency or effect of otherwise misleading or deceiving the purchasing or consuming public, is an unfair trade practice.

RULE 12. *Misuse of Word "Free."*

The use of the word "free," or the equivalent thereof, when the article is in fact not free, with the capacity or tendency to mislead or deceive the purchasing or consuming public, is an unfair trade practice.

RULE 13. *Fictitious Prices.*

Offering canned tuna or canned tuna products for sale at prices purported to be reduced from what are in fact fictitious prices, or offering such products for sale at a purported reduction in price when such purported reduction is in fact fictitious, with the capacity and tendency or effect of misleading or deceiving the purchasing or consuming public, is an unfair trade practice.

RULE 14. *False Invoicing.*

Withholding from or inserting in an invoice, billing, or statement any material information by reason of which omission or insertion a false record is made, wholly or in part, of the transaction which such invoice or billing or statement purports to represent, with the effect of thereby misleading or deceiving the purchasing or consuming public, is an unfair trade practice.

RULE 15. *Inducing Breach of Contract.*

Inducing or attempting to induce the breach of existing lawful contracts between competitors and their customers or their suppliers by any false or deceptive means whatsoever, or interfering with or obstructing the performance of any such contractual duties or services by any such means, with the purpose and effect of unduly hampering, injuring, or prejudicing competitors in their businesses, is an unfair trade practice.

RULE 16. *Commercial Bribery.*

It is an unfair trade practice for a member of the industry, directly or indirectly, to give, or offer to give, or permit or cause to be given, money or anything of value to agents, employees, or representatives of customers or prospective customers, or to agents, employees, or representatives of competitors' customers or prospective customers,

without the knowledge of their employers or principals, as an inducement to influence their employers or principals to purchase or contract to purchase products manufactured or sold by such industry member or the maker of such gift or offer, or to influence such employers or principals to refrain from dealing in the products of competitors or from dealing or contracting to deal with competitors.

RULE 17. *Enticing Away Employees of Competitors.*

Wilfully enticing away the employees of competitors with the purpose and effect of unduly hampering, injuring, or prejudicing competitors in their businesses is an unfair trade practice.

RULE 18. *Unfair Threats of Infringement Suits.*

The circulation of threats of suit for infringement of patents or trade-marks among customers or prospective customers of competitors, not made in good faith but for the purpose or with the effect of harassing or intimidating such customers or prospective customers, or of unduly hampering, injuring, or prejudicing competitors in their businesses, is an unfair trade practice.

RULE 19. *Consignment Distribution.*

It is an unfair trade practice for any member of the industry to employ the practice of shipping industry products on consignment or pretended consignment for the purpose and with the effect of artificially clogging or closing trade outlets and unduly restricting competitors' use of said trade outlets in getting their products to consumers through regular channels of distribution, thereby injuring, destroying, or preventing competition or tending to create a monopoly or to unreasonably restrain trade. Nothing in this rule shall be construed as restricting or preventing consignment shipping or marketing of industry products in good faith where suppressing of competition, restraint of trade, or undue interference with competitors' use of the usual channels of distribution is not effected.

RULE 20. *Selling Below Cost.*

The practice of selling industry products below the seller's cost, when pursued with wrongful intent of thereby injuring a competitor and where the effect of such practice is to unreasonably restrain trade, tend to create a monopoly, or substantially lessen competition, is an unfair trade practice.

This rule is not to be construed as prohibiting all sales below cost, but only such selling below the seller's cost as is resorted to and pursued as a monopolistic practice with the wrongful intent referred to and coupled with the effect of unreasonably restraining trade, tending to create a monopoly, or substantially lessening competition. Sales below cost by a competitor not in a sufficiently strong competitive

position to produce, and not actually producing, the monopolistic or restraining effect mentioned, do not fall within the inhibitions of this rule.

The costs referred to in the rule are actual costs of the respective seller and not some other figure or average costs in the industry determined by an industry cost survey or otherwise.

RULE 21. Discrimination.

(a) Prohibited Discriminatory Prices, or Rebates, Refunds, Discounts, Credits, Etc., Which Effect Unlawful Price Discrimination.—

It is an unfair trade practice for any member of the industry engaged in commerce,¹ in the course of such commerce, to grant or allow, secretly or openly, directly or indirectly, any rebate, refund, discount, or credit, or the granting of free goods, or other form of price differential, where such rebate, refund, discount, or credit, or the granting of free goods, or other form of price differential, effects a discrimination in price between different purchasers of goods of like grade and quality, where either or any of the purchases involved therein are in commerce,¹ and where the effect thereof may be substantially to lessen competition or tend to create a monopoly in any line of commerce,¹ or to injure, destroy, or prevent competition with any person who either grants or knowingly receives the benefit of such discrimination, or with customers of either of them: *Provided, however—*

(1) That the goods involved in any such transaction are sold for use, consumption, or resale within any place under the jurisdiction of the United States;

(2) That nothing herein contained shall prevent differentials which make only due allowance for differences in the cost of manufacture, sale, or delivery resulting from the differing methods or quantities in which such commodities are to such purchasers sold or delivered;

(3) That nothing herein contained shall prevent persons engaged in selling goods, wares, or merchandise in commerce¹ from selecting their own customers in bona fide transactions and not in restraint of trade;

(4) That nothing herein contained shall prevent price changes from time to time where made in response to changing conditions affecting either (a) the market for the goods concerned, or (b) the marketability of the goods, such as, but not limited to, actual or imminent deterioration of perishable goods, obsolescence of seasonal goods, distress sales under court process, or sales in good faith in discontinuance of business in the goods concerned.

(b) Prohibited Brokerage and Commissions.—It is an unfair trade

¹ See footnote, p. 460.

practice for any member of the industry engaged in commerce,¹ in the course of such commerce, to pay or grant, or to receive or accept, anything of value as a commission, brokerage, or other compensation, or any allowance or discount in lieu thereof, except for services rendered in connection with the sale or purchase of goods, wares, or merchandise, either to the other party to such transaction or to an agent, representative, or other intermediary therein where such intermediary is acting in fact for or in behalf, or is subject to the direct or indirect control, of any party to such transaction other than the person by whom such compensation is so granted or paid.

(c) Prohibited Advertising or Promotional Allowances, Etc.—It is an unfair trade practice for any member of the industry engaged in commerce¹ to pay or contract for the payment of advertising or promotional allowances or any other thing of value to or for the benefit of a customer of such member in the course of such commerce as compensation or in consideration for any services or facilities furnished by or through such customer in connection with the processing, handling, sale, or offering for sale of any products or commodities manufactured, sold, or offered for sale by such member, unless such payment or consideration is available on proportionally equal terms to all other customers competing in the distribution of such products or commodities.

(d) Prohibited Discriminatory Services or Facilities.—It is an unfair trade practice for any member of the industry to discriminate in favor of one purchaser against another purchaser or purchasers of a commodity bought for resale, with or without processing, by contracting to furnish or furnishing, or by contributing to the furnishing of, any services or facilities connected with the processing, handling, sale, or offering for sale of such commodity so purchased upon terms not accorded to all purchasers on proportionally equal terms.

(e) Inducing or Receiving an Illegal Discrimination in Price.—It is an unfair trade practice for any member of the industry engaged in commerce,¹ in the course of such commerce, knowingly to induce or receive a discrimination in price which is prohibited by the foregoing provisions of this Rule 21.

(f) Purchases by Schools, Colleges, Universities, Public Libraries, Churches, Hospitals, and Charitable Institutions Not Operated for Profit.—The foregoing provisions of this Rule 21 relate to practices within the purview of the Robinson-Patman Antidiscrimination Act, which Act and the application thereunder of this Rule 21 are subject to the limitations expressed in the amendment to such Robinson-Patman Antidiscrimination Act, which amendment was approved May 26, 1938, and reads as follows:

¹ See footnote, p. 460.

"Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That nothing in the Act approved June 19, 1936 (Public, Numbered 692, Seventy-fourth Congress, second session), known as the Robinson-Patman Antidiscrimination Act, shall apply to purchases of their supplies for their own use by schools, colleges, universities, public libraries, churches, hospitals, and charitable institutions not operated for profit." (52 Stat. 446; United States Code, 1940 Edition, Title 15, Sec. 13c.)

RULE 22. *Unlawful Interference with Raw Material Purchases.*

It is an unfair trade practice for any member of the industry, by means of any monopolistic practices or through combination, conspiracy, coercion, boycott, threats, or any other unlawful means, directly or indirectly, to interfere with a competitor's right to purchase his raw materials and supplies from whomsoever he chooses, or to sell his product to whomsoever he chooses.

RULE 23. *Aiding or Abetting Use of Unfair Trade Practices.*

It is an unfair trade practice for any person, firm, or corporation to aid, abet, coerce, or induce another, directly or indirectly, to use or promote the use of any unfair trade practice specified in these rules.

GROUP II*

RULE A. *Cost Records.*

It is the judgment of the industry that each member should independently keep proper and accurate records for determining his costs.

RULE B. *Repudiation or Cancellation of Contracts.*

Lawful contracts are business obligations which should be performed in letter and in spirit. The repudiation or cancellation of contracts by sellers on a rising market or by buyers on a declining market is condemned by the industry.

A Committee on Trade Practices is hereby created by the industry to cooperate with the Federal Trade Commission and to perform such acts as may be legal and proper to put these rules into effect.

Promulgated by the Federal Trade Commission June 23, 1945.

* See page VIII for headnote applicable to Group II Rules.

TRADE PRACTICE RULES

FOR THE

WOOD CASED LEAD PENCIL INDUSTRY

PROMULGATED JUNE 29, 1945

STATEMENT BY THE COMMISSION

Trade practice rules for the Wood Cased Lead Pencil Industry, as hereinafter set forth, are promulgated by the Federal Trade Commission under the trade practice conference procedure.

Wood cased lead pencils, the products of the industry, are of many types and grades. They are sold in large numbers by manufacturers, importers, distributors, dealers, and other marketers; and are used extensively by the public and business generally, in schools, in drawing and drafting, in the crafts, and in many other activities. The rules are directed toward the maintenance of free and fair competition in the business of marketing such pencils throughout the several channels of trade and to consumers or the purchasing public. To this end, the rules catalog and proscribe various unfair trade practices which are to be avoided and prevented that the industry, trade, and the public may be adequately protected against the harmful effects of such practices. Other rules are also included which provide additional support for sound business methods.

Production of wood cased lead pencils in the United States is large. In 1944 it exceeded 1,047,000,000 pencils. Invested capital of the manufacturers in this country is above \$25,000,000. In addition to the domestic production, imported wood cased lead pencils are also covered by the rules, as well as those which are assembled in this country from imported leads or slats.

The proceedings for establishing the rules were instituted upon application from members of the industry. A general trade practice conference was held by the Commission in New York City. At such conference suggested rules were considered, subject to the Commission's approval in the form deemed proper. Thereafter, a draft of the proposed rules under consideration by the Commission was published for the information of all concerned and public notice was issued by the Commission under which all interested or affected parties (including consumers) were afforded opportunity to present their views, including such pertinent information, suggestions, amendments, or objections as they desired to offer, and to be heard. Such hearing was accordingly held in Washington, D. C. All matters presented pursuant to such

public notice, or otherwise received in the proceedings, were duly considered.

Thereupon, and after full consideration, final action was taken by the Commission whereby it approved and received, respectively, the trade practice rules appearing in Group I and Group II, as follows:

THE RULES

GROUP I*

RULE 1. *Misrepresentation and Misbranding.*

It is an unfair trade practice to use, or cause or promote the use of, any advertising by radio, newspapers, magazines, or other media, or any trade promotional literature, label, brand, mark, imprint, designation, or representation, however disseminated or published—

(a) which has the capacity and tendency or effect of misleading or deceiving the purchasing or consuming public with respect to the lead hardness, brand, grade, origin, quality, quantity, durability, size, use, value, price, or terms of sale of any industry product, or with respect to the manufacture, distribution, or marketing of such product; or

(b) which is false, misleading, or deceptive in any other respect.

RULE 2. *Deception as to Origin of Pencils Made of Fully Fabricated Imported Lead or Slats.*

A. In the sale or distribution in the domestic market of wood cased lead pencils assembled in the United States from fully fabricated imported lead or slats—

(1) It is an unfair trade practice to conceal or fail to fully and nondeceptively disclose the foreign origin of such lead or slats or both, as the case may be, the concealment or nondisclosure having the capacity and tendency or effect of misleading or deceiving the purchasing or consuming public.

(2) The practice of imprinting the phrase "Made in U. S. A." upon such pencils or their containers, or the use thereof in advertisements or other representations pertaining to such pencils, is also an unfair trade practice when truthful disclosure is not clearly and conspicuously made, in immediate conjunction therewith, showing that such lead or slats or both, as the case may be, have been imported from or made in the country of their origin.

B. *Manner of Disclosure.*—The following is prescribed as a proper

* See page VIII for headnote applicable to Group I Rules.

manner of making said disclosure under this rule of the foreign origin of such lead or slats or both, as the case may be:

(1) Unless the disclosure is made on the pencils themselves, the disclosure shall in all cases be made on the wrapper or immediate container of a dozen or smaller number of pencils, irrespective of whether or not the phrase "Made in U. S. A." is used; and

(2) Whenever the phrase "Made in U. S. A." is used, whether on the pencils, on their wrappers or containers, or in advertising matter, the disclosure shall be made in immediate conjunction with such phrase wherever used.

(3) Illustrative designations of foreign origin of such lead or slats which may be used under this rule are as follows: "Lead made in . . .," "Slats made in . . .," "Lead and slats made in . . .," "Lead imported from . . .," "Slats imported from . . .," "Lead and slats imported from . . .," (inserting the applicable country of origin in such blanks.)

C. All the provisions of this rule respecting the phrase "Made in U. S. A." shall be equally applicable to expressions or representations of similar import or meaning such as, but not limited to, "U. S. A.," "Made in America," "American Made," "U. S. Product," etc.

D. This rule shall not be construed as prohibiting the imprinting upon such pencils, or the use in advertising or elsewhere, of the name of the city or State, or both, which constitute the address of the person or concern manufacturing or marketing such pencils: *Provided, however*, all other provisions of this rule are complied with and no deception is involved.

E. Nothing herein shall be deemed to relieve anyone of the necessity of complying with the requirements of the customs laws or regulations, or other applicable provisions of law or regulations, relating to the marking of imported articles.

RULE 3. *Misuse of Word "Free," Etc.*

It is an unfair trade practice to use the term "free," or any other term of similar import or meaning, to describe, designate, or refer to any industry product which is not given to the recipient thereof without cost and unconditionally.

RULE 4. *Defamation of Competitors or Disparagement of Their Products.*

The defamation of competitors by falsely imputing to them dishonorable conduct, inability to perform contracts, questionable credit standing, or by other false representations, or the false disparagement of the grade or quality of the products of competitors or of the source or origin of raw materials or component parts used in their products, or the false disparagement of the nature or form of business conducted

by competitors, their credit terms, values, policies, or services, or other false disparagement, is an unfair trade practice.

RULE 5. Procurement of Competitors' Confidential Information by Unfair Means and Wrongful Use Thereof.

It is an unfair trade practice for any member of the industry to obtain information concerning the business of a competitor by bribery of an employee or agent of such competitor, by false or misleading statements or representations, by the impersonation of one in authority, or by any other unfair means, and to use the information so obtained in such manner as to injure said competitor in his business or to suppress competition or unreasonably restrain trade.

RULE 6. Commercial Bribery.

It is an unfair trade practice for any member of the industry, directly or indirectly, to give, or offer to give, or permit or cause to be given, money or anything of value to agents, employees, or representatives of customers or prospective customers, or to agents, employees, or representatives of competitors' customers or prospective customers, without the knowledge of their employers or principals, as an inducement to influence their employers or principals to purchase or contract to purchase products manufactured or sold by such industry member or the maker of such gift or offer, or to influence such employers or principals to refrain from dealing or contracting to deal with competitors.

RULE 7. Imitation or Simulation of Trade-marks, Trade Names, Etc.

The imitation or simulation of the trade-marks, trade names, brands, or labels of competitors, with the capacity and tendency or effect of misleading or deceiving purchasers, prospective purchasers, or the consuming public, is an unfair trade practice.

RULE 8. Selling Below Cost.

The practice of selling industry products below the seller's cost, when pursued with wrongful intent of thereby injuring a competitor and where the effect of such practice is to unreasonably restrain trade, tend to create a monopoly, or substantially lessen competition, is an unfair trade practice.

This rule is not to be construed as prohibiting all sales below cost, but only such selling below the seller's cost as is resorted to and pursued as a monopolistic practice with the wrongful intent referred to and coupled with the effect of unreasonably restraining trade, tending to create a monopoly, or substantially lessening competition.

All elements recognized by good accounting practice as proper elements of such cost shall be included in determining cost under this rule. The costs referred to in the rule are actual costs of the respective seller and not some other figure or average costs in the industry, determined by an industry cost survey or otherwise.

RULE 9. Use of "Loss Leaders."

The practice of selling any product of the industry below the seller's cost as a "loss leader" to induce the purchase of any other product of the industry, the sale of the latter being used to recoup the loss sustained on the "loss leader" product so sold, with the capacity and tendency or effect of misleading or deceiving purchasers, prospective purchasers, or the consuming public, is an unfair trade practice.

RULE 10. Coercing Purchase of One Product as a Prerequisite to the Purchase of Other Products.

The practice of coercing the purchase of one or more products as a prerequisite to the purchase of one or more other products, where the effect may be to substantially lessen competition or tend to create a monopoly or to unreasonably restrain trade, is an unfair trade practice.

RULE 11. Substitution of Products.

The practice of shipping or delivering products which do not conform to samples submitted, to specifications upon which the sale is consummated, or to representations made prior to securing the order, without the consent of the purchasers to such substitution, or with the capacity and tendency or effect of misleading or deceiving the purchasing or consuming public, is an unfair trade practice.

RULE 12. Combination or Coercion to Fix Prices, Suppress Competition, or Restrain Trade.

It is an unfair trade practice for a member of the industry, or any other person:

(a) To use, directly or indirectly, any form of threat, intimidation, or coercion against any member of the industry or other person to unlawfully fix, maintain, or enhance prices, suppress competition, or restrain trade; or

(b) To enter into or take part in, directly or indirectly, any agreement, understanding, combination, conspiracy, or concerted action with one or more members of the industry, or with one or more other persons, to unlawfully fix, maintain, or enhance prices, suppress competition, or restrain trade.

RULE 13. Discrimination.

(a) *Prohibited Discriminatory Prices, or Rebates, Refunds, Discounts, Credits, Etc., Which Effect Unlawful Price Discrimination.*—It is an unfair trade practice for any member of the industry engaged in commerce,¹ in the course of such commerce, to grant or allow, secretly or openly, directly or indirectly, any rebate, refund, discount, credit, or other form of price differential (whether in the form of so-called

¹ See footnote, p. 460.

free goods or otherwise), where such rebate, refund, discount, credit, or other form of price differential, effects a discrimination in price between different purchasers of goods of like grade and quality, where either or any of the purchases involved therein are in commerce,¹ and where the effect thereof may be substantially to lessen competition or tend to create a monopoly in any line of commerce,¹ or to injure, destroy, or prevent competition with any person who either grants or knowingly receives the benefit of such discrimination, or with customers of either of them: *Provided, however*—

(1) That the goods involved in any such transaction are sold for use, consumption, or resale within any place under the jurisdiction of the United States;

(2) That nothing herein contained shall prevent differentials which make only due allowance for differences in the cost of manufacture, sale, or delivery resulting from the differing methods or quantities in which such commodities are to such purchasers sold or delivered;

(3) That nothing herein contained shall prevent persons engaged in selling goods, wares, or merchandise in commerce¹ from selecting their own customers in bona fide transactions and not in restraint of trade;

(4) That nothing herein contained shall prevent price changes from time to time where made in response to changing conditions affecting either (a) the market for the goods concerned, or (b) the marketability of the goods, such as, but not limited to, actual or imminent deterioration of perishable goods, obsolescence of seasonal goods, distress sales under court process, or sales in good faith in discontinuance of business in the goods concerned.

(b) *Prohibited Brokerage and Commissions.*—It is an unfair trade practice for any member of the industry engaged in commerce,¹ in the course of such commerce, to pay or grant, or to receive or accept, anything of value as a commission, brokerage, or other compensation, or any allowance or discount in lieu thereof, except for services rendered in connection with the sale or purchase of goods, wares, or merchandise, either to the other party to such transaction or to an agent, representative, or other intermediary therein where such intermediary is acting in fact for or in behalf, or is subject to the direct or indirect control, of any party to such transaction other than the person by whom such compensation is so granted or paid.

(c) *Prohibited Advertising or Promotional Allowances, Etc.*—It is an unfair trade practice for any member of the industry engaged in commerce¹ to pay or contract for the payment of advertising or promotional allowances or any other thing of value to or for the benefit of a customer of such member in the course of such commerce as com-

¹ See footnote, p. 460.

pensation or in consideration for any services or facilities furnished by or through such customer in connection with the processing, handling, sale, or offering for sale of any products or commodities manufactured, sold, or offered for sale by such member, unless such payment or consideration is available on proportionally equal terms to all other customers competing in the distribution of such products or commodities.

(d) *Prohibited Discriminatory Services or Facilities.*—It is an unfair trade practice for any member of the industry to discriminate in favor of one purchaser against another purchaser or purchasers of a commodity bought for resale, with or without processing, by contracting to furnish or furnishing, or by contributing to the furnishing of, any services or facilities connected with the processing, handling, sale, or offering for sale of such commodity so purchased upon terms not accorded to all purchasers on proportionally equal terms.

(e) *Inducing or Receiving an Illegal Discrimination in Price.*—It is an unfair trade practice for any member of the industry engaged in commerce,¹ in the course of such commerce, knowingly to induce or receive a discrimination in price which is prohibited by the foregoing provisions of this Rule 13.

(f) *Purchases by Schools, Colleges, Universities, Public Libraries, Churches, Hospitals, and Charitable Institutions Not Operated for Profit.*—The foregoing provisions of this Rule 13 relate to practices within the purview of the Robinson-Patman Antidiscrimination Act, which Act and the application thereunder of this Rule 13 are subject to the limitations expressed in the amendment to such Robinson-Patman Antidiscrimination Act, which amendment was approved May 26, 1938, and reads as follows:

“Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That nothing in the Act approved June 19, 1936 (Public, Numbered 692, Seventy-fourth Congress, second session), known as the Robinson-Patman Antidiscrimination Act, shall apply to purchases of their supplies for their own use by schools, colleges, universities, public libraries, churches, hospitals, and charitable institutions not operated for profit.” (52 Stat. 446; United States Code, 1940 Edition, Title 15, Sec. 13c.)

GROUP II*

RULE A. *Ambiguity in Contracts or Orders.*

In order to avoid ambiguity and misunderstanding between buyers

¹ See footnote, p. 460.

* See page VIII for headnote applicable to Group II Rules.

and sellers, it is the judgment of the industry that contracts or orders for wood cased lead pencils should be specific as to the description, quality, and price of the pencils to be furnished thereunder.

RULE B. Fictitious Bids.

The industry condemns fake or fictitious bids made for the purpose of deceiving competitors and securing undue advantage.

RULE C. Recording of Trade-marks, Trade Names, Etc., to Avoid Confusion.

To avoid confusion within the industry, it is recommended that each member thereof voluntarily file with some person designated by the industry all trade-marks, trade names, labels, or brands belonging to and used by such member and that such information be made equally available to all members of the industry and to the public.

A Committee on Trade Practices is hereby created by the industry to cooperate with the Federal Trade Commission and to perform such acts as may be legal and proper to put these rules into effect.

Promulgated by the Federal Trade Commission June 29, 1945.

**TRADE PRACTICE RULES
FOR THE
BUTTON JOBBING INDUSTRY
PROMULGATED JUNE 30, 1945**

STATEMENT BY THE COMMISSION

Trade practice rules for the Button Jobbing Industry, as hereinafter set forth, are promulgated by the Federal Trade Commission under the trade practice conference procedure.

A primary purpose of the rules is to maintain free and fair competition for the protection of the buying public and the industry through the elimination and prevention of harmful trade practices. To this end various unfair methods of competition, unfair or deceptive acts or practices, and other trade evils are listed and proscribed. Certain additional provisions included are likewise in support of sound business methods.

The rules apply to the business of selling and distributing all kinds of buttons and related articles. Such products are jobbed or wholesaled by members of the industry for use in the manufacturing trades, and for distribution or resale to the public generally. They are purchased by garment manufacturers and others for use on the many different products requiring buttons, particularly wearing apparel for men, women, and children. They are also purchased by retailers and other resellers from members of the industry for sale to the purchasing public. Total annual sales aggregate \$25,000,000 at wholesale prices.

Proceedings for establishment of the rules were instituted upon application of industry members. A general trade practice conference of the industry was held by the Commission in New York City, and at such conference suggested rules were considered. Subsequently, a draft of the proposed rules in appropriate form was published for the information of all concerned and public notice was issued affording interested or affected parties opportunity to present their views, including such pertinent information, suggestions, or objections as they desired to offer, and to be heard in the premises. Accordingly, hearing was held in Washington, D. C., and all matters presented, or otherwise received in the proceeding, were duly considered.

Thereafter, and upon full consideration, final action was taken by the Commission whereby it approved and received, respectively, the following trade practice rules in Group I and Group II:

THE RULES

GROUP I*

RULE 1. *Misrepresentation and Deception.*

(a) It is an unfair trade practice to use, or cause or promote the use of, any trade promotional literature, advertising matter, mark, brand, label, designation, or representation, however disseminated or published, which has the capacity and tendency or effect of misleading or deceiving purchasers or prospective purchasers with respect to the price, grade, quality, quantity, substance, character, nature, size, use, design, preparation, manufacture, or distribution of any product of the industry, or in any other material respect.

(b) It is an unfair trade practice (1) to cause any buttons or other products of the industry of foreign origin to be represented, directly or indirectly, as being domestic products or as not having been imported from or manufactured in a foreign country; or (2) to conceal the fact that such products are of foreign origin either by failing to clearly mark the country of origin on the display cards or containers, or by other deceptive concealment.

(NOTE.—Nothing herein shall be construed as relieving anyone of such further marking as may be required by applicable laws or regulations thereunder.)

RULE 2. *Defamation of Competitors or Disparagement of Their Products.*

The defamation of competitors by falsely imputing to them dishonorable conduct, inability to perform contracts, questionable credit standing, or by other false representations, or the false disparagement of the products of competitors in any respect, or of their business methods, selling prices, values, credit terms, policies, or services, is an unfair trade practice.

RULE 3. *Enticing Away Employees of Competitors.*

Wilfully enticing away the employees of competitors, with the purpose and effect of thereby hampering or injuring competitors in their business and destroying or substantially lessening competition, is an unfair trade practice.

(NOTE.—Nothing in this rule shall be construed as prohibiting employees or agents from seeking more favorable employment.)

RULE 4. *Inducing Breach of Contract.*

Inducing or attempting to induce the breach of existing lawful contracts between competitors and their customers or their suppliers

* See page VIII for headnote applicable to Group I Rules.

by any false or deceptive means whatsoever, or interfering with or obstructing the performance of any such contractual duties or services by any such means, with the purpose and effect of unduly hampering, injuring, or prejudicing competitors in their business, is an unfair trade practice.

RULE 5. *Selling Below Cost.*

The practice of selling industry products below the seller's cost, when pursued with wrongful intent of thereby injuring a competitor and where the effect of such practice is to unreasonably restrain trade, tend to create a monopoly, or substantially lessen competition, is an unfair trade practice.

This rule is not to be construed as prohibiting all sales below cost, but only such selling below the seller's cost as is resorted to and pursued as a monopolistic practice with the wrongful intent referred to and coupled with the effect of unreasonably restraining trade, tending to create a monopoly, or substantially lessening competition.

All elements recognized by good accounting practice as proper elements of such cost shall be included in determining cost under this rule. The costs referred to in the rule are actual costs of the respective seller and not some other figure or average costs in the industry, determined by an industry cost survey or otherwise.

RULE 6. *Procurement of Competitors' Confidential Information by Unfair Means and Wrongful Use Thereof.*

It is an unfair trade practice for any member of the industry to obtain information concerning the business of a competitor by bribery of an employee or agent of such competitor, by false or misleading statements or representations, by the impersonation of one in authority, or by any other unfair means, and to use the information so obtained in such manner as to injure said competitor in his business or to suppress competition or unreasonably restrain trade.

RULE 7. *Commercial Bribery.*

(a) *In Selling or Marketing.*—It is an unfair trade practice for a member of the industry, directly or indirectly, to give, or offer to give, or permit or cause to be given, money or anything of value to agents, employees, or representatives of customers or prospective customers, or to agents, employees, or representatives of competitors' customers or prospective customers, without the knowledge of their employers or principals, as an inducement to influence their employers or principals to purchase or contract to purchase products manufactured or sold by such industry member or the maker of such gift or offer, or to influence such employers or principals to refrain from dealing in the products of competitors or from dealing or contracting to deal with competitors.

(b) *In Purchasing Supplies.*—It is an unfair trade practice for any member of the industry, directly or indirectly, to bribe an employee or agent of a supplier to induce such supplier to discriminate in favor of such member of the industry over other purchasers from such supplier, with the effect of thereby hampering a competitor of such member in his business and destroying or substantially lessening competition. (See also Rule 10, paragraph (e), relative to procurement of illegal discrimination in price.)

RULE 8. False Invoicing.

Withholding from or inserting in an invoice any statements or information by reason of which omission or insertion a false record is made, wholly or in part, of the transaction represented on the face of such invoice, with the effect of thereby misleading or deceiving purchasers or prospective purchasers, is an unfair trade practice.

RULE 9. Consignment Shipping.

It is an unfair trade practice for any member of the industry to use the practice of shipping goods on consignment or pretended consignment for the purpose and with the effect of artificially clogging trade outlets and unduly restricting competitors' use of said trade outlets in getting their goods to consumers through regular channels of distribution, or with such purpose to entirely close said trade outlets to such competitors so as to substantially lessen competition or tend to create a monopoly or to unreasonably restrain trade: *Provided, however*, that nothing herein shall be construed or used as restricting or preventing consignment shipping or marketing of commodities in good faith and without artificial interference with competitors' use of the usual channels of distribution in such manner as thereby to suppress competition or restrain trade.

RULE 10. Discrimination.

(a) *Prohibited Discriminatory Prices, or Rebates, Refunds, Discounts, Credits, Etc., Which Effect Unlawful Price Discrimination.*—It is an unfair trade practice for any member of the industry engaged in commerce,¹ in the course of such commerce, to grant or allow, secretly or openly, directly or indirectly, any rebate, refund, discount, credit, or other form of price differential (whether in the guise of samples or otherwise), where such rebate, refund, discount, credit, or other form of price differential, effects a discrimination in price between different purchasers of goods of like grade and quality, where either or any of the purchases involved therein are in commerce,¹ and where the effect thereof may be substantially to lessen competition or tend to create a monopoly in any line of commerce,¹ or to injure,

¹ See footnote, p. 460.

destroy, or prevent competition with any person who either grants or knowingly receives the benefit of such discrimination, or with customers of either of them: *Provided, however*—

(1) That the goods involved in any such transaction are sold for use, consumption, or resale within any place under the jurisdiction of the United States;

(2) That nothing herein contained shall prevent differentials which make only due allowance for differences in the cost of manufacture, sale, or delivery resulting from the differing methods or quantities in which such commodities are to such purchasers sold or delivered;

(3) That nothing herein contained shall prevent persons engaged in selling goods, wares, or merchandise in commerce¹ from selecting their own customers in bona fide transactions and not in restraint of trade;

(4) That nothing herein contained shall prevent price changes from time to time where made in response to changing conditions affecting either (a) the market for the goods concerned, or (b) the marketability of the goods, such as, but not limited to, actual or imminent deterioration of perishable goods, obsolescence of seasonal goods, distress sales under court process, or sales in good faith in discontinuance of business in the goods concerned.

(b) *Prohibited Brokerage and Commissions.*—It is an unfair trade practice for any member of the industry engaged in commerce,¹ in the course of such commerce, to pay or grant, or to receive or accept, anything of value as a commission, brokerage, or other compensation, or any allowance or discount in lieu thereof, except for services rendered in connection with the sale or purchase of goods, wares, or merchandise, either to the other party to such transaction or to an agent, representative, or other intermediary therein where such intermediary is acting in fact for or in behalf, or is subject to the direct or indirect control, of any party to such transaction other than the person by whom such compensation is so granted or paid.

(c) *Prohibited Advertising or Promotional Allowances, Etc.*—It is an unfair trade practice for any member of the industry engaged in commerce¹ to pay or contract for the payment of advertising or promotional allowances or any other thing of value to or for the benefit of a customer of such member in the course of such commerce as compensation or in consideration for any services or facilities furnished by or through such customer in connection with the processing, handling, sale, or offering for sale of any products or commodities manufactured, sold, or offered for sale by such member, unless such payment or consideration is available on proportionally equal terms to all other customers competing in the distribution of such products or commodities.

¹ See footnote, p. 460.

(d) *Prohibited Discriminatory Services or Facilities.*—It is an unfair trade practice for any member of the industry to discriminate in favor of one purchaser against another purchaser or purchasers of a commodity bought for resale, with or without processing, by contracting to furnish or furnishing, or by contributing to the furnishing of, any services or facilities connected with the processing, handling, sale, or offering for sale of such commodity so purchased upon terms not accorded to all purchasers on proportionally equal terms.

(e) *Inducing or Receiving an Illegal Discrimination in Price.*—It is an unfair trade practice for any member of the industry engaged in commerce,¹ in the course of such commerce, knowingly to induce or receive a discrimination in price which is prohibited by the foregoing provisions of this Rule 10.

(f) *Purchases by Schools, Colleges, Universities, Public Libraries, Churches, Hospitals, and Charitable Institutions Not Operated for Profit.*—The foregoing provisions of this Rule 10 relate to practices within the purview of the Robinson-Patman Antidiscrimination Act, which Act and the application thereunder of this Rule 10 are subject to the limitations expressed in the amendment to such Robinson-Patman Antidiscrimination Act, which amendment was approved May 26, 1938, and reads as follows:

“Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That nothing in the Act approved June 19, 1936 (Public, Numbered 692, Seventy-fourth Congress, second session), known as the Robinson-Patman Antidiscrimination Act, shall apply to purchases of their supplies for their own use by schools, colleges, universities, public libraries, churches, hospitals, and charitable institutions not operated for profit.” (52 Stat. 446; United States Code, 1940 Edition, Title 15, Sec. 13c.)

RULE 11. *Imitation of Trade-marks, Etc.*

The practice of imitating or causing to be imitated, or directly or indirectly promoting or aiding the imitation of, the trade-marks, trade names, or other exclusively owned symbols or marks of identification of competitors, or the exclusively owned patterns or designs of competitors which have been patented and have not been directly or by operation of law dedicated to the public, with the capacity and tendency or effect of thereby misleading or deceiving purchasers, prospective purchasers, or the consuming public, is an unfair trade practice.

¹ See footnote, p. 460.

RULE 12. *Combination or Coercion to Fix Prices, Suppress Competition, or Restrain Trade.*

It is an unfair trade practice for a member of the industry, or any other person:

(a) To use, directly or indirectly, any form of threat, intimidation, or coercion against any member of the industry or other person to unlawfully fix, maintain, or enhance prices, suppress competition, or restrain trade; or

(b) To enter into or take part in, directly or indirectly, any agreement, understanding, combination, conspiracy, or concerted action with one or more members of the industry, or with one or more other persons, to unlawfully fix, maintain, or enhance prices, suppress competition, or restrain trade.

GROUP II*

RULE A. *Giving of Samples.*

The industry disapproves the giving of samples without charge except only as may be necessary to acquaint purchasers or prospective purchasers with the grade or quality of the product offered for sale, and where the giving of such samples by any member of the industry is not practiced or accomplished in such way or to such extent as to effectuate an illegal discrimination in price contrary to the provisions of Rule 10.

RULE B. *Arbitration.*

The industry approves the practice of handling business disputes between members of the industry and their customers in a fair and reasonable manner, coupled with a spirit of moderation and good will, and every effort should be made by the disputants themselves to compose their differences. If unable to do so they should, if possible, submit these disputes to arbitration.

RULE C. *Repudiation of Contracts.*

Lawful contracts are business obligations which should be performed in letter and in spirit. The cancellation or repudiation of contracts by sellers on a rising market or by buyers on a declining market is condemned by the industry.

Promulgated by the Federal Trade Commission June 30, 1945.

* See page VIII for headnote applicable to Group II Rules.

TRADE PRACTICE RULES

FOR THE

LOW PRESSURE REFRIGERANTS INDUSTRY

PROMULGATED JUNE 30, 1945

STATEMENT BY THE COMMISSION

Trade practice rules for the Low Pressure Refrigerants Industry, as hereinafter set forth, are promulgated by the Federal Trade Commission under the trade practice conference procedure.

Low pressure refrigerants are those having a vapor pressure of not more than 100 pounds per square inch, absolute, at a temperature of 70 degrees Fahrenheit. Included therein are sulphur dioxide, methyl chloride, various Freons, and other actual or potential refrigerants.

The products are produced by manufacturers in the industry in the form of compressed liquified gases or as liquids. They form the cooling agent in mechanical refrigerators used in the home, in meat shops and stores, and in quick-freezing units. The products are also used extensively as the cooling agent in equipment for the preservation of food aboard ship, and in refrigerator cars and vessels for the transportation of perishable commodities. Such refrigerants are also essential to most forms of comfort cooling or air-conditioning in homes, office buildings, business establishments, hospitals—particularly operating rooms—in trains, places of entertainment or public gatherings, and in other places.

The refrigerants are stored, sold, and distributed in large metal drums and in pressure cylinders of different sizes ranging from 3 pounds to several hundred pounds capacity. Manufacturing members of the industry sell and distribute the refrigerants in such containers to wholesale and retail dealers, refrigeration supply jobbers, refrigeration machine manufacturers, service organizations whose members repair refrigeration machinery, and to owners of such machinery. Sales are also made by the jobbers, wholesalers, retailers, and repairmen, to consumers and other purchasers, either in the original containers or in smaller ones to which the product has been transferred. Total sales to the purchasing public of low pressure refrigerants of all kinds are at present in the neighborhood of \$25,000,000 per annum.

The rules are issued in the interest of maintaining free and fair competition in the marketing of the refrigerants throughout the various channels of trade and to the purchasing public. To this end various deceptive and discriminatory practices and other trade evils are listed

and proscribed. Their elimination and prevention is required for protection of business and the buying public.

Proceedings for establishment of the rules were instituted upon application from members of the industry. A general trade practice conference for the industry was held by the Commission in New York City at which suggested rules were considered. Thereafter draft of the proposed rules in appropriate form was published by the Commission and made available to all interested or affected parties upon public notice whereby they were afforded opportunity to present their views, including such pertinent information, suggestions, or objections as they desired to offer, and to be heard in the premises. Pursuant to the notice, such hearing was held in Washington, D. C., and all matters presented or otherwise received were duly considered.

Thereupon, and after full consideration of the entire matter, final action was taken by the Federal Trade Commission whereby it approved and received, respectively, the trade practice rules appearing in Group I and Group II, as follows:

THE RULES

GROUP I*

RULE 1. *Misrepresentation in Diverse Forms.*

It is an unfair trade practice to use, or cause or promote the use of, any trade promotional literature, advertising matter, guarantee, warranty, mark, brand, label, designation, or representation, however disseminated or published,

(1) which has the capacity and tendency or effect of misleading or deceiving the purchasing or consuming public with respect to the grade, quality, quantity, origin, efficacy, price, ingredients, safety, preparation, manufacture, or distribution of any industry product; or

(2) which is false, misleading, or deceptive in any other material respect.

RULE 2. *Deception in Respect to "Heels."*

It is an unfair trade practice to represent to purchasers or prospective purchasers that refunds will be credited or paid for "heels" when such refunds are not actually made, or when such "heels" do not actually exist, or when such representation is otherwise false, misleading, or deceptive.

(For inhibited discriminations in respect of "heels," see Rule 14.)

* See page VIII for headnote applicable to Group I Rules.

(The term "heels" as used in these rules refers to the small residual portion of refrigerant remaining in the cylinder or container and returned therein by the purchaser to the manufacturer, such residual portion, however, not being regarded as "heels" if it exceeds 10% of the full capacity of the respective container.)

RULE 3. Deception in Respect of Refrigerant Containers.

It is an unfair trade practice to cause any refrigerant shipped or delivered in a cylinder or container not complying fully with appropriate regulations of the Interstate Commerce Commission to be represented or passed off, directly or indirectly, as and for a refrigerant shipped or delivered in cylinders or containers which do comply with such regulations.

(NOTE.—Nothing in this rule shall be construed as relieving any member of the industry or other party of the necessity of complying with all of the rules and regulations of the Interstate Commerce Commission relative to the shipment or delivery in commerce in cylinders or containers of the various compressed refrigerants used, including requirements as to packing, testing, re-testing, marking, qualification, and maintenance of cylinders, etc.; and no misrepresentation or deception, direct or indirect, shall be practiced in the sale or distribution of industry products respecting any such matters.)

RULE 4. Deceptive Use of Refrigerant Containers.

The use by any member of the industry of the refrigerant cylinder or container of a competitor with the capacity and tendency or effect of thereby misleading or deceiving purchasers or prospective purchasers, or the unauthorized use of a competitor's container with the effect of prejudicing such competitor in his business, is an unfair trade practice.

(NOTE.—Owing to the responsibility of the owners of containers involving compliance with Interstate Commerce Commission Specifications or requiring periodic testing of such containers, the industry recommends that containers which bear a competitor's identification marks should not be used without owner's permission evidenced by bill of sale, lease, or other instrument in writing, or duly recorded transfer of ownership on the records of I. C. C.)

RULE 5. Defamation of Competitors or Disparagement of Their Products.

The defamation of competitors by falsely imputing to them dishonorable conduct, inability to perform contracts, questionable credit standing, or by other false representations, or the false disparagement of the grade, quality, quantity, origin, efficacy, price, ingredients, safety, preparation, manufacture, or distribution of the products of competitors, or of their business methods, selling prices, values, credit terms, policies, or services, is an unfair trade practice.

RULE 6. Imitation of Trade-marks, Trade Names, Etc.

The practice of imitating or causing to be imitated, or directly or indirectly promoting the imitation of, the trade-marks, trade names, or other exclusively owned symbols or marks of identification of competitors, having the capacity and tendency or effect of misleading or deceiving purchasers or prospective purchasers, is an unfair trade practice.

RULE 7. Commercial Bribery.

It is an unfair trade practice for a member of the industry, directly or indirectly, to give, or offer to give, or permit or cause to be given, money or anything of value to agents, employees, or representatives of customers or prospective customers, or to agents, employees, or representatives of competitors' customers or prospective customers, without the knowledge of their employers or principals, as an inducement to influence their employers or principals to purchase or contract to purchase products manufactured or sold by such industry member or the maker of such gift or offer, or to influence such employers or principals to refrain from dealing in the products of competitors or from dealing or contracting to deal with competitors.

RULE 8. Inducing Breach of Contract.

Inducing or attempting to induce the breach of existing lawful contracts between competitors and their customers or their suppliers by any false or deceptive means whatsoever, or interfering with or obstructing the performance of any such contractual duties or services by any such means, with the purpose and effect of unduly hampering, injuring, or prejudicing competitors in their business, is an unfair trade practice.

RULE 9. False Invoicing.

It is an unfair trade practice to withhold from or insert in invoices any statements or information by reason of which omission or insertion a false record is made, wholly or in part, of the transactions represented on the face of such invoices, with the effect of thereby misleading or deceiving purchasers or prospective purchasers.

RULE 10. Procurement of Competitors' Confidential Information by Unfair Means and Wrongful Use Thereof.

It is an unfair trade practice for any member of the industry to obtain information concerning the business of a competitor by bribery of an employee or agent of such competitor, by false or misleading statements or representations, by the impersonation of one in authority, or by any other unfair means, and to use the information so obtained in such manner as to injure said competitor in his business or to suppress competition or unreasonably restrain trade.

RULE 11. *Consignment Distribution.*

It is an unfair trade practice for any member of the industry to employ the practice of shipping industry products on consignment or pretended consignment for the purpose and with the effect of artificially clogging or closing trade outlets and unduly restricting competitors' use of said trade outlets in getting their products to consumers through regular channels of distribution, thereby injuring, destroying, or preventing competition or tending to create a monopoly or to unreasonably restrain trade. Nothing in this rule shall be construed as restricting or preventing consignment shipping or marketing of industry products in good faith where suppression of competition, restraint of trade, or undue interference with competitors' use of the usual channels of distribution, is not effected.

RULE 12. *Selling Below Cost.*

The practice of selling industry products below the seller's cost with the intent and with the effect of injuring a competitor and where the effect may be substantially to lessen competition or tend to create a monopoly or unreasonably restrain trade is an unfair trade practice. All elements recognized by good accounting practice as proper elements of such cost shall be included in determining cost under this rule. The costs, however, which are referred to in the rule, are actual costs of the respective seller and not some other figure or average costs in the industry determined by an industry cost survey or otherwise.

RULE 13. *Combination or Coercion to Fix Prices, Suppress Competition, or Restrain Trade.*

It is an unfair trade practice for a member of the industry or any person, firm, partnership, corporation, or association,

(a) to use, directly or indirectly, any form of threat, intimidation, or coercion against any member of the industry to unlawfully fix, maintain, or enhance prices, suppress competition, or restrain trade; or

(b) to enter into or take part in, directly or indirectly, any agreement, understanding, combination, conspiracy, or concert of action with one or more members of the industry, or with one or more persons, firms, partnerships, corporations, or associations, to unlawfully fix, maintain, or enhance prices, suppress competition, or restrain trade.

RULE 14. *Discrimination.*

(a) *Prohibited Discriminatory Prices, or Rebates, Refunds, Discounts, Credits, Etc., Which Effect Unlawful Price Discrimination.*—

It is an unfair trade practice for any member of the industry engaged in commerce,¹ in the course of such commerce, to grant or allow, secretly

¹ See footnote, p. 460.

or openly, directly or indirectly, any rebate, so-called "heel" refund, or other refund, discount, credit, or other form of price differential, where such rebate, so-called "heel" refund, or other refund, discount, credit, or other form of price differential, effects a discrimination in price between different purchasers of goods of like grade and quality, where either or any of the purchases involved therein are in commerce,¹ and where the effect thereof may be substantially to lessen competition or tend to create a monopoly in any line of commerce,¹ or to injure, destroy, or prevent competition with any person who either grants or knowingly receives the benefit of such discrimination, or with customers of either of them: *Provided, however*—

(1) That the goods involved in any such transaction are sold for use, consumption, or resale within any place under the jurisdiction of the United States;

(2) That nothing herein contained shall prevent differentials which make only due allowance for differences in the cost of manufacture, sale, or delivery resulting from the differing methods or quantities in which such commodities are to such purchasers sold or delivered;

(3) That nothing herein contained shall prevent persons engaged in selling goods, wares, or merchandise in commerce¹ from selecting their own customers in bona fide transactions and not in restraint of trade;

(4) That nothing herein contained shall prevent price changes from time to time where made in response to changing conditions affecting either (a) the market for the goods concerned, or (b) the marketability of the goods, such as, but not limited to, actual or imminent deterioration of perishable goods, obsolescence of seasonal goods, distress sales under court process, or sales in good faith in discontinuance of business in the goods concerned.

(b) *Prohibited Brokerage and Commissions.*—It is an unfair trade practice for any member of the industry engaged in commerce,¹ in the course of such commerce, to pay or grant, or to receive or accept, anything of value as a commission, brokerage, or other compensation, or any allowance or discount in lieu thereof, except for services rendered in connection with the sale or purchase of goods, wares, or merchandise, either to the other party to such transaction or to an agent, representative, or other intermediary therein where such intermediary is acting in fact for or in behalf, or is subject to the direct or indirect control, of any party to such transaction other than the person by whom such compensation is so granted or paid.

(c) *Prohibited Advertising or Promotional Allowances, Etc.*—It is an unfair trade practice for any member of the industry engaged in

¹ See footnote, p. 460.

commerce¹ to pay or contract for the payment of advertising or promotional allowances or any other thing of value to or for the benefit of a customer of such member in the course of such commerce as compensation or in consideration for any services or facilities furnished by or through such customer in connection with the processing, handling, sale, or offering for sale of any products or commodities manufactured, sold, or offered for sale by such member, unless such payment or consideration is available on proportionally equal terms to all other customers competing in the distribution of such products or commodities.

(d) *Prohibited Discriminatory Services or Facilities.*—It is an unfair trade practice for any member of the industry to discriminate in favor of one purchaser against another purchaser or purchasers of a commodity bought for resale, with or without processing, by contracting to furnishing or furnishing, or by contributing to the furnishing of, any services or facilities connected with the processing, handling, sale, or offering for sale of such commodity so purchased upon terms not accorded to all purchasers on proportionally equal terms.

(e) *Inducing or Receiving an Illegal Discrimination in Price.*—It is an unfair trade practice for any member of the industry engaged in commerce,¹ in the course of such commerce, knowingly to induce or receive a discrimination in price which is prohibited by the foregoing provisions of this Rule 14.

(f) *Purchases by Schools, Colleges, Universities, Public Libraries, Churches, Hospitals, and Charitable Institutions Not Operated for Profit.*—The foregoing provisions of this Rule 14 relate to practices within the purview of the Robinson-Patman Antidiscrimination Act, which Act and the application thereunder of this Rule 14 are subject to the limitations expressed in the amendment to such Robinson-Patman Antidiscrimination Act, which amendment was approved May 26, 1938, and reads as follows:

"Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That nothing in the Act approved June 19, 1936 (Public, Numbered 692, Seventy-fourth Congress, second session), known as the Robinson-Patman Antidiscrimination Act, shall apply to purchases of their supplies for their own use by schools, colleges, universities, public libraries, churches, hospitals, and charitable institutions not operated for profit." (52 Stat. 446; United States Code, 1940 Edition, Title 15, Sec. 13c.)

¹ See footnote, p. 460.

RULE 15. Discrimination as to Return of Cylinders or Containers, and Discrimination in Refunding of Deposits on Cylinders or Containers.

It is an unfair trade practice for any member of the industry engaged in commerce¹ to discriminate in favor of one customer-purchaser against another customer-purchaser of industry products, bought from such member of the industry for resale, by contracting to furnish or furnishing in connection therewith:

(a) the service or facility whereby such favored purchaser is accorded the right or privilege of retaining refrigerant cylinders or containers on more favorable conditions, including longer periods of time, than those accorded other customer-purchasers and upon terms not accorded to all customer-purchasers on proportionally equal terms; or

(b) the service or facility whereby such favored purchaser is accorded the right or privilege of receiving the return of deposits or allowances upon terms not accorded to all customer-purchasers on proportionally equal terms.

GROUP II*

RULE A. Return of Cylinders.

(a) Recognizing that the rate of cylinder return affects the cost of marketing refrigerants, and desiring to give the best possible service at the lowest possible cost to the purchaser, the industry seeks to encourage prompt return of empty cylinders.

(b) Cylinders that do not circulate freely and are thus used for storage by purchasers of the refrigerant greatly increase the cost and difficulty of doing business. The industry recommends that such cylinders, if not returned after a reasonable period of time, may properly be considered the property of the purchasers of the refrigerant and believes a delay of more than two years in making such return an unreasonable length of time for this purpose.

RULE B. Return of Merchandise.

The practice, by members of the industry, of selling merchandise and later permitting the purchaser to return it for credit or refund of purchase price, without just cause, creates waste and loss, increases the cost of doing business to the detriment of both the industry and the public, and is condemned by the industry, subject, however, to the requirements and limitations set forth in the provisions of Rules 14 and 15 of Group I, herein, and subject also to the general limitation

* See page VIII for headnote applicable to Group II Rules.

¹ See footnote, p. 460.

that members of the industry shall not engage in any combination or conspiracy in restraint of trade, or use any other illegal methods in the regulation, control, or prevention of the return of merchandise.

RULE C. Differentiating Between Wholesale and Retail Transactions.

Where products of the industry are sold at wholesale and retail in the same establishment, the failure on the part of such concern correctly to differentiate between or identify the two types of transactions, where the result may be to create confusion and deception as to the character of the transaction in the minds of purchasers or prospective purchasers, is condemned by the industry.

RULE D. Dissemination of Credit Information.

The industry records its approval of the distribution among members of the industry of information covering delinquent and slow credit accounts insofar as such may be lawfully done.

Promulgated by the Federal Trade Commission June 30, 1945.

FOOTNOTE IN CERTAIN RULES CONCERNING THE WORD "COMMERCE"

In certain rules throughout the foregoing compilation a footnote reference is made to the word "commerce" as it appeared in those rules when promulgated. Such word "commerce," to which the footnote reference is appended referring the reader to this page, is defined as follows:

The word "commerce" means trade or commerce among the several States and with foreign nations, or between the District of Columbia or any Territory of the United States and any State, Territory, or foreign nation, or between any insular possessions or other places under the jurisdiction of the United States, or between any such possession or place and any State or Territory of the United States or the District of Columbia or any foreign nation, or within the District of Columbia or any Territory or any insular possession or other place under the jurisdiction of the United States (exclusive, however, of the Philippine Islands).

APPENDIX

TRADE PRACTICE CONFERENCE PROCEDURE

[Reprint of Rule XXVII, RULES, POLICY, AND ACTS of the Federal Trade Commission, Dated July 1, 1946]

(a) *Purpose.*—The trade practice conference procedure has for its purpose the establishment, by the Commission, of trade practice rules in the interest of industry and the purchasing public. This procedure affords opportunity for voluntary participation by industry groups or other interested parties in the formulation of rules to provide for elimination or prevention of unfair methods of competition, unfair or deceptive acts or practices and other illegal trade practices. They may also include provisions to foster and promote fair competitive conditions and to establish standards of ethical business practices in harmony with public policy. No provision or rule, however, may be approved by the Commission which sanctions a practice contrary to law or which may aid or abet a practice contrary to law.

To establish rules in the interest of industry and the public.

Voluntary participation to eliminate illegal trade practices or promote fair competitive conditions and ethical standards, etc.

But no rule, etc., which sanctions or aids, etc., practices contrary to law to be approved.

(b) *When authorized.*—Trade practice conference proceedings may be authorized by the Commission upon its own motion or upon application therefor whenever such proceedings appear to the Commission to be in the interest of the public. In authorizing proceedings, the Commission may consider whether such proceedings appear to have possibilities (1) of constructively advancing the best interests of industry on sound competitive principles in consonance with public policy, or (2) of bringing about more adequate or equitable observance of laws under which the Commission has jurisdiction, or (3) of otherwise protecting or advancing the public interest.

Upon Commission's own motion or application when in public interest.

Considerations determining.

(c) *Application.*—Application for a trade practice conference may be filed with the Commission by any interested person, party or group. Such application shall be in writing and be signed by the applicant or the duly authorized representative of the applicant or group desiring such conference. The following information, to the extent known to the applicant, shall be furnished with such application or in a supplement thereto:

May be filed by any interested party in writing.

Information required.

(1) A brief description of the industry, trade, or subject to be treated.

(2) The kind and character of the products involved.

(3) The size or extent and the divisions of the industry or trade groups concerned.

(4) The estimated total annual volume of production or sales of the commodities involved.

(5) List of membership of the industry or trade groups concerned in the matter.

(6) A brief statement of the acts, practices, methods of competition or other trade practices desired to be considered, or drafts of suggested trade practice rules.

Permissible upon request.

Submittal of data, etc.

Public notice.

In charge of member of Commission or its staff.

Transcript of proceedings, etc., to be submitted to Commission.

All interested persons, including consumers, to be heard.

Approved rules to be published in Federal Register.

(d) *Informal Discussions with Members of the Commission's Staff.*—Any interested person or group may, upon request, be granted opportunity to confer in respect to any proposed trade practice conference with the Commission's Trade Practice Conference Division, either prior or subsequent to the filing of any such application. They may also submit any pertinent data or information which they desire to have considered. Such submission shall be made during such period of time as the Commission or its duly authorized official may designate.

(e) *Industry Conferences.*—Reasonable public notice of the time and place of any such authorized conference shall be issued by the Commission. A member of the Commission or of its staff shall have charge of the conference and shall conduct the conference pursuant to direction of the Commission and in such manner as will facilitate the proceeding and afford appropriate consideration of matters properly coming before the conference. A transcript of the conference proceedings shall be made, which, together with all rules, resolutions, modifications, amendments or other matters offered, shall be filed in the office of the Commission and submitted for its consideration.

(f) *Public Hearing on Proposed Rules.*—Before final approval by the Commission of rules for an industry, and upon such reasonable public notice as to the Commission seems appropriate, further opportunity shall be afforded by the Commission to all interested persons, corporations or other organizations, including consumers, to submit in writing relevant suggestions or objections and to appear and be heard at a designated time and place.

(g) *Promulgation of Rules.*—When trade practice rules shall have been finally approved and received by the Commission, they shall be promulgated by official order of the

Commission and published, pursuant to law, in the Federal Register. Said rules shall become operative thirty (30) days from date of promulgation or at such other time as may be specified by the Commission. Copies of the final rules shall be made available at the office of the Commission. Under the procedure of the Commission a copy of the trade practice rules as promulgated by the Commission is sent to each member of the industry whose name and address is available, together with an acceptance form providing opportunity to such member to signify his intention to observe the rules in the conduct of his business.

(h) *Violations.*—Complaints as to the use, by any person, corporation or other organization, of any act, practice or method inhibited by the rules may be made to the Commission by any person having information thereof. Such complaints, if warranted by the facts and the law, will receive the attention of the Commission in accordance with the law. In addition, the Commission may act upon its own motion in proceeding against the use of any act, practice or method contrary to law.

Effective date.

Copies.

Considered upon complaint or Commission's own motion.

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